United States Circuit Court,

SOUTHERN DISTRICT OF NEW YORK.

The American Bell Telephone Company and Others

VS.

The People's Telephone Company and Others.

DEFENDANT'S SUR-REBUTTING TESTIMONY.

HARRISBURG, PA.:
LANE S. HART, PRINTER AND BINDER.
1884.

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IN THE

Circuit Court of the United States

FOR THE SOUTHERN DISTRICT OF NEW YORK.

American Bell Telephone Company *et al.*

vs.

People's Telephone Company *et al.*

SUR-REBUTTING TESTIMONY FOR RESPONDENTS.

HARRISBURG, *October* 23, 1883, 10 *A. M.*

Present, Mr. Smith and Mr. Storrow, for complainants, and Mr. Hill and Mr. Jacobs, for respondents.

ANDREW EVANS, *being produced, sworn and examined, saith:*

Examined by Mr. Hill.

My age is thirty; residence, Dillsburg, York county, Pa.; occupation, laborer.

Q. 1. What relation, if any, are you to Jacob Evans, who testified on behalf of complainants in rebuttal (pages 974 to 989 complainants' rebutting printed record)?

A. A brother.

Q. 2. Your brother Jacob testified in substance that he worked at Etter & Shanklin's mill from the beginning of November, 1874, till some time in September, 1875; that when he left that mill in September, 1875, he went to Milltown, and worked around there during the fall

and winter, living in a house there belonging to George Leonard; that on the 1st of March, 1876, he took charge of the mill at Milltown as head miller for Dellinger & May, and in that spring moved into another house belonging to Dellinger & May: had you a general knowledge of all those facts?

A. I had no knowledge of all of them.

Q. 3. Which of those facts had you a general knowledge of?

A. I know he moved from the lower mill—I don't know the name of it—up to the Milltown mill.

Q. 4. Do you know in what year he moved up to Milltown, and in what time of year?

A. No, sir.

Q. 5. After he moved up to Milltown, did you on any occasion visit him; if so, when first?

A. Yes, sir; in 1875.

Q. 6. Did anyone go with you on that visit to your brother Jacob; if so, who went with you?

A. Two sisters.

Q. 7. Please give their names.

A. Sarah Elizabeth Evans and Margaret Jane Evans.

Q. 8. Where did you and your two sisters go from when you started to make that visit?

A. From my father's.

Q. 9. What is your father's name; where does he now live, and where did he live at the time you made that visit to your brother Jacob?

A. Moses Evans; he now lives in Franklintown, York county; he then lived at Aleck Underwood's farm, near Dillsburg, York county.

Q. 10. Does he now live in Franklintown village or near there on a farm?

A. Near there on a farm.

Q. 11. Of the two sisters who went with you on that visit, is either one married; if so, which one, and what is her present name?

A. Yes, sir; Margaret Jane is married, and Margaret Jane Erb is her proper name.

Q. 12. By what conveyance did you go from your father's residence to your brother's home at Milltown on that visit?

A. Horse and buggy.

Q. 13. Whose horse and buggy?

A. My own.

Q. 14. Do you remember on what day of the week you went down on that visit to your brother's house and on what day you returned?

A. On Saturday I went down and on Sunday I returned.

Q. 15. What time of day was it when you went down to Milltown on that occasion?

A. In the afternoon about three o'clock.

Q. 16. What time of day was it when you returned from Milltown?

A. Sunday evening.

Q. 17. Then if I understand you correctly you went down to Milltown Saturday afternoon, stayed at your brother's that night and the next day, which was Sunday, and went back to Dillsburg Sunday evening—is that correct?

A. Yes, sir.

Q. 18. Did your two sisters who went down with you return to Dillsburg with you?

A. Yes, sir.

Q. 19. You say you went down with your own horse and buggy, do you remember where you were keeping your horse and buggy at that time?

A. Yes, sir; Ambrose Knaub's.

Q. 20. Was Ambrose Knaub then living where he now is?

A. Yes, sir.

Q. 21. If I am correctly informed, the farm on which he lives is near Dillsburg, and is close to the Alex. Underwood farm, on which your father was then living?

A. Yes, sir.

Q. 22. How happened you to be keeping your horse and buggy at that time at Ambrose Knaub's farm?

A. I was hired there.

Q. 23. You were hired by Mr. Ambrose Knaub to work on his farm, do you mean?

A. Yes, sir.

Q. 24. How long were you hired by Mr. Knaub at that time?

A. About one month.

Q. 25. Were you ever hired by Mr. Knaub to work on his farm before or after that time?

A. No, sir.

Q. 26. Did you live at Mr. Knaub's house while you were hired for him that month?

A. Yes, sir.

Q. 27. State whether you ever lived at his house at any other time than that?

A. No, sir.

Q. 28. Did you keep your horse and buggy at his place during the entire month that you lived with him?

A. Yes, sir.

Q. 29. When you left Mr. Knaub what did you do with your horse and buggy—where did you keep them after that?

A. I traded the horse off for another horse; I sold that horse, and I do not remember where I kept the buggy.

Q. 30. During the month that you worked for Mr. Knaub did he borrow your horse or buggy for any purpose; if so, what?

A. Yes, sir; he did borrow it to go to a funeral.

Q. 31. What funeral, and where?

A. Jake Hurst, at Mechanicsburg.

Q. 32. I understand you that your visit to Milltown with your two sisters was made while you were working that month for Mr. Knaub; do you remember whether it was along near the beginning of your work for Mr. Knaub, or whether it was near the end of the month in which you worked for him?

A. The end.

Q. 33. Can you state whether the Sunday which you spent at Milltown with your two sisters was, or was not the last Sunday that happened during the month when you worked for Mr. Knaub?

A. Yes, sir; it was.

Q. 34. Can you fix the time when you began working for Mr. Knaub?

A. Yes, sir.

Q. 35. Will you state what day of the month it was when your month's service for him began?

A. The 8th of November, 1875.

Q. 36. For whom had you been working during the summer and fall immediately before you went into Mr. Knaub's employ?

A. For my father.

Q. 37. On the Underwood farm?

A. Yes, sir.

Q. 38. How long did your father live on that Underwood farm?

A. Three years.

Q. 39. Do you remember when he began to live on that farm?

A. Yes, sir; in the spring of 1875; it was in the middle of March when we moved there.

Q. 40. Do you remember anything of particular interest that was going on at the Underwood farm during that summer and fall before you worked for Mr. Knaub?

A. Yes, sir.

Q. 41. State what it was?

A. Building a barn.

Q. 42. The barn that now stands on the farm?

A. Yes, sir.

Q. 43. That is a large, handsome and expensive building, is it not?

A. Yes, sir.

Q. 44. Do you remember who built that barn for Mr. Underwood; if so, please state.

A. Yes, sir; Henry Klugh.

Q. 45. Who boarded the hands that worked on the barn?

A. My father.

Q. 46. Was the barn right close to the house where your father lived at that time.

A. Yes, sir.

Q. 47. During the same season in which the barn was built, do you remember anything about some sheds and a cistern being built at the barn?

A. Yes, sir.

Q. 48. Did you do any work on the barn, the sheds, or the cistern, that season?

A. Yes, sir.

Q. 49. On which of them did you work?

A. I helped to raise the barn and helped to build the cistern.

Q. 50. Did you help to build the cistern before or after you worked for Mr. Knaub.

A. Before.

Q. 51. How long before?

A. I helped to work at the cistern in October, 1875.

Q. 52. Was the cistern completed before you went to Mr. Knaub's, or was some work done on it after you began to work for him?

A. I don't remember.

Q. 53. While you and your two sisters were at your brother Jacob's house, at Milltown, during your visit there in November or December,

1875, as you have testified, did you see Mr. Daniel Drawbaugh, of Milltown?

A. Yes, sir.

Q. 54. Where did you see him?

A. In his shop.

Q. 55. On what day did you see him in his shop at that time?

A. On Sunday.

Q. 56. Was anybody with you when you saw him at his shop that Sunday; if so, who?

A. My sister Sarah, and my sister Jane, and my brother Jacob and his wife.

Q. 57. Did you all five go down together from your brother's house to Mr. Drawbaugh's shop.

A. Yes, sir.

Q. 58. State whether Mr. Drawbaugh did, or did not, on that occasion, exhibit his talking-machines to you and your party?

[*Objected to by Mr. Storrow as not in rebuttal.*]

A. Yes, sir.

Q. 59. Do you remember whether your brother Jacob was present when Mr. Drawbaugh exhibited his talking-machines to you and your party at that time?

[*Same objection.*]

A. Yes, sir; he was present.

Q. 60. Did Mr. Drawbaugh then exhibit one talking machine or a number of talking-machines to your party?

[*Same objection.*]

A. Only one.

Q. 61. Did you or did you not see other talking-machines besides that one lying around there in the shop at that time?

[*Same objection.*]

A. I did not.

Q. 62. Please look at the machines now shown you, marked "F," "B," "C," "I," "A," "D," "E," and state whether you recognize any of them as having been seen by you at that time?

[*Same objection.*]

A. I do; yes, sir.

Q. 63. Please point out whatever machines you recognize as having been seen by you at that time.

[*Same objection.*]

A. I saw these [indicating "D" and "E"]; and I saw that one [indicating "B"]; I saw that one [indicating "C"]; the others I don't recollect.

Q. 64. When you testified in answers 60 and 61 that Mr. Drawbaugh exhibited only one talking-machine to you, and that you did not see others lying around in the shop, did you regard these several instruments which you saw as several parts of one talking-machine?

[*Same objection, and objected to as leading.*]

A. Yes, sir.

Q. 65. Do you remember whether or not Mr. Drawbaugh on that occasion operated his talking-machine; that is, talked through it while somebody listened?

[*Same objection.*]

A. Yes, sir.

Q. 66. Did he talk in the same room where the person was listening, or go into another room to talk?

[*Same objection.*]

A. He went into another room.

Q. 67. Did you go with him into the other room, or remain where the listening was going on?

[*Same objection.*]

A. I remained.

Q. 68. Do you remember who was listening at the instrument in the room where you were while Drawbaugh was talking through an instrument in the other room; if so, who?

[*Same objection.*]

A. My brother Jacob.

Q. 69. I suppose there was, of course, some conversation with Mr. Drawbaugh about his talking-machine at that time; state whether you remember anything that Mr. Drawbaugh said about the talking-machine during that Sunday while you were at his shop, and whether he said anything about how far he could talk through the machine?

[*Objected to as above, and as leading and calling for incompetent testimony.*]

A. He said: "I can take this machine and talk clean out to Europe, across the ocean."

Q. 70. Do you remember whether he spoke about the machine being operated by electricity or not?

[*Same objections.*]

A. Yes, sir; he said it was worked by electricity.

Q. 71. Did he seem pretty enthusiastic about his talking-machine invention, or not?

[*Same objections.*]

A. Yes, sir.

Q. 72. When you got back to Dillsburg did you speak to others about the talking machine which you had seen at Mr. Drawbaugh's shop, or not?

[*Same objections.*]

A. Yes, sir; but I don't remember whom to.

Q. 73. How far was your father's house, at Dillsburg, from Mr. Drawbaugh's shop, at Milltown?

[*Same objections.*]

A. I don't know exactly, but it was about nine miles, as near as I can tell.

Q. 74. At the time of that visit to your brother Jacob's family at Milltown, when you and your two sisters were down there together, as you have testified, what house did your brother Jacob live in, if you remember?

[*Same objections.*]

A. I don't remember what house.

Q. 75. Do you remember in what part of town the house was?

[*Same objections.*]

A. In the upper end of town.

Q. 76. Is the house now standing or not; so far as you know?

[*Same objections.*]

A. So far as I know it is torn down—the house.

Q. 77. Was it, or was it not, the first house that your brother lived at Milltown after he moved up there from Etter & Shanklin's mill?

[*Same objections.*]

A. I don't remember.

Q. 78. Do you know whether it was near the blacksmith shop or not?

[*Same objections.*]

A. Yes; it was not far from the blacksmith's shop.

Q. 79. On the same side of the road, or the opposite side?

[*Same objections.*]

A. The opposite side.

Q. 80. State whether you and your two sisters, Sarah and Jane, ever visited your brother Jacob's family together, at Milltown, at any other time than the one you have testified about?

[*Same objections.*]

A. We did not.

Q. 81. When were you next in Mr. Drawbaugh's shop after that Sunday which you have testified about?

[*Same objections.*]

A. In 1879.

Q. 82. Have you ever been there since 1879?

[*Same objections.*]

A. No, sir; not as I remember of.

Q. 83. When you were there, in 1879, did anybody go to the shop with you, or did you go alone?

[*Same objections.*]

A. My wife went with me.

Q. 84. Did you see any talking machines there when you were there in 1879?

[*Same objections.*]

A. No, sir; not that I remember of.

Q. 85. Do you remember what you went there for in 1879?

[*Same objections.*]

A. To visit my brother Jacob.

Q. 86. I mean, do you remember what you went to Mr. Drawbaugh's shop for, in 1879.

[*Same objections.*]

A. No, sir; I don't remember.

Q. 87. When you were at his shop, in 1879, did you have any conversation with him about talking machines, or was he busy about his work while you were there?

[*Same objections.*]

A. I had no conversation with him; he was not busy about his work.

Q. 88. Have you any memorandum book, or account book, containing any entries about your employment in the summer and fall of 1875; if so, will you please produce it?

[*Same objections.*]

A. I have; yes, sir.

[*Witness produces small black memorandum book.*]

Q. 89. Will you please point out any memoranda relating to the year 1875?

[*Same objections.*]

[*Witness points out memoranda.*]

A. Here are some:

"October the 21
tow days and
a half diging
a sistern
for underwood

October the 25
husting Corn
for farther
25 one half day 00.50
26 one day 100
27 one day 100
28 one day 100
29 one day 100
30 to quarter day 100

November the 1
1. one day 100
2. one half day 50
3. 3-4 of a day 75
4 to one day 100
5 to one day 100
6 to one day 100 "

[*Recess until* 2.30, *P. M.*]

[*Examination resumed at* 2.30 *P. M. Present, same counsel.*]

Q. 90. I observe on one page of your memorandum-book the following entry:

"1875 Aprile the 1.

I commenct to work for Moses Evans the 1 day of Aprile in the year 1875. Worked 7 7 month for 16 dollars a month."

In what year was that memorandum entered in the book which you have produced?

[*Same objections.*]

A. In the year 1875.

Q. 90½. How many months did you work by the month for your father, commencing in April, 1875?

[*Same objections.*]

A. Seven months.

Q. 91. How happened the figure "7" to be written down twice in that memorandum?

[*Same objections.*]

A. It was done through a mistake. The first wasn't written very plain, so I wrote it again, and forgot to rub the other one out.

Q. 92. I observe on another page of said memorandum book, the following memorandum:

"Andrew Evans bought a buggy from William Heiges for 175 dols. Paid."

Does that memorandum refer to the buggy which you had in 1875, and in which you rode down to Milltown?

[*Same objections.*]

A. Yes, sir.

Q. 93. This memorandum book from which these entries are taken, appears to be a small pocket memorandum book, old and very much worn; will you tell me why it is so much worn and so dilapidated?

[*Same objections.*]

A. Because I carried it in my pocket till it became so.

Q. 94. When were those various entries made in it; I mean those entries which we have copied here?

[*Same objections.*]

A. In 1875.

Q. 95. In whose handwriting are they all?

[*Same objections.*]

A. My own.

Q. 96. Has the book been in your possession all the time since that date?

[*Same objections.*]

A. Yes, sir.

Q. 97. You have testified that you commenced working for Mr. Knaub on the 8th day of November, 1875; and that you worked for your father that year 7 months, beginning the first of April. In that case the seven months would be out on the first of November; what did you do from the 1st day of November to the time when you commenced to work for Mr. Knaub?

[*Same objections.*]

A. I don't know what I was doing; I was working for my father by the day.

Cross-examined, de bene esse, by Mr. Storrow.

Cross-Q. 98. Do you mean to say that you worked for your father by the month from the first of April, 1875, till the first of November, 1875?

A. Yes, sir.

Cross-Q. 99. And then you worked for him by the day from the first of November, 1875, to the eighth of November, 1875?

A. Yes, sir.

Cross-Q. 100. Did you ever work for your father after that?

A. Yes, sir.

Cross-Q. 101. When?

A. In 1878.

Cross-Q. 102. Did you work for your father between the time when you worked for Knaub and 1878?

A. Yes, sir.

Cross-Q. 103. How much?

A. I don't recollect.

Cross-Q. 104. Give me your best recollection as to about how much?

A. About six months, anyhow, in 1876.

Cross-Q. 105. Then your work for your father before 1878 was seven months in 1875, and about six months in 1876; is that what you mean?

A. Yes, sir.

Cross-Q. 106. When was it that you began to work for your father after the six months in 1876?

A. I commenced in the spring of 1878.

Cross-Q. 107. I understand you to say that you worked a month at Knaub's in the fall of 1875, did you?

A. Yes, sir.

Cross-Q. 108. Whom did you work for after that month?

A. Andrew Spahr.

Cross-Q. 109. Where did he live?

A. He lived about a mile north of Dillsburg on the Carlisle road.

Cross-Q. 110. How far from your father's house?

A. About a mile and a half.

Cross-Q. 111. What wages did he pay you?

A. Five and ten dollars a month. First five and the other part ten.

Cross-Q 112. How long did you work for him?

A. As near as I can recollect some four months.

Cross-Q. 113. Where did you live while you worked for him?

A. I lived with him.

Cross-Q. 114. Where did you live while you worked for Knaub?

A. I lived with Knaub.

Cross-Q. 115. What did he pay you?

A. Twelve dollars a month.

Cross-Q. 116. When did your father move on to the Underwood farm? How long did he live there, and when did he move away?

A. He moved on in the year 1875, lived there three years, and moved away in 1878.

Cross-Q. 117. Was it in the spring of 1875 and spring of 1878 that he moved?

A. Yes, sir.

Cross-Q. 118. Did he move in the spring of 1878 to where he lives now?

A. Yes, sir.

Cross-Q. 119. How far is his present farm from the Underwood farm where he used to live?

A. As near as I can tell about three miles.

Cross-Q. 120. Wasn't one hundred and seventy-five dollars a rather large sum for a young man of your earnings to invest in a horse and buggy?

[*Objected to by Mr. Hill as immaterial and irrelevant.*]

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A. It was; yes.

Cross-Q. 121. Did you pay for your horse and buggy?

[*Same objection.*]

A. Yes, sir.

Cross-Q. 122. When was your sister Margaret married?

A. This last winter.

Cross-Q. 123. When did you buy the buggy?

A. In 1875.

Cross-Q. 124. What time in 1875?

A. I don't remember the date; it was about harvest, as near as I can remember.

Cross-Q. 125. That would be in June or July, would it not?

A. Yes, sir.

Cross-Q. 126. Where did Aleck Underwood live in 1875?

A. At Mechanicsburg.

Cross-Q. 127. How much did you work for him in 1875 and 1876?

A. I don't remember that. My father kept account of that.

Cross-Q. 128. How did your father happen to keep account of the work you did for Aleck Underwood?

A. Because he kept account of all the hands that worked there for Mr. Underwood.

Cross-Q. 129. What work did you do for Mr. Underwood?

A. I don't remember it all, but I worked at the cistern and at the barn.

Cross-Q. 130. What did Mr. Underwood pay you?

A. He didn't pay me anything.

Cross-Q. 131. Do you mean that your father hired you by the month and let out your work, by the day or otherwise, to Mr. Underwood?

A. Yes, sir; all except a few days.

Cross-Q. 132. What few days were those?

A. I don't remember when they were.

Cross-Q. 133. Before or after you went to work for Mr. Knaub?

A. Before.

Cross-Q. 134. When did you next work for Mr. Underwood?

A. In 1879.

Cross-Q. 135. In your direct examination, Ans. 89, and following, some entries were put in from your memorandum book; I don't see any date of any year there; what year was it?

A. The year 1875.

Cross-Q. 136. You read in your 92d answer a memorandum about buying a buggy; I see no date on that; what year was that?

A. 1875.

Cross-Q. 137. Do you remember when it was that you made that entry about the buggy in that book?

A. As near as I can tell it was shortly before I went to Knaub's that I put it in.

Cross-Q. 138. Who was L. Bearinger?

A. Louis Bearinger, my father-in-law.

Cross-Q. 139. Were you married in 1875, or when were you married?

A. In 1879.

Cross-Q. 140. Did you have dealings with Mr. Louis Bearinger in 1875?

A. No, sir.

Cross-Q. 141. In your memorandum book, and a couple of pages after the memorandum about the buggy, I find a number of charges for labor against Aleck Underwood.

"Alex Underwood

November 19	
19 to one day	75
20 to one day	75
21 half day	37½
22 one day	75
24 half day	37½
25 one day	75
26 one day	75
27 one day	75
28 half day	37½
29 to three quarters	50
	612
	158
	762"

when did you do that work, and what was it?

A. It was in 1879—ditching.

Cross-Q. 142. Then that book contains entries all down to 1879, does it?

A. Yes, sir.

Cross-Q. 143. And there is nothing in the book to tell in what year

that Underwood work was done any more than there is as to the entries put in evidence in your eighty-ninth answer, is there?

A. No, sir.

Cross-Q. 144. In your ninetieth answer you read an entry about work for your father in 1875. How does it come that that comes later in the book than the entry of work for Underwood in 1879?

A. Because I hadn't any particular way of putting it down. I put it down anyway—just as I happened to open the book at a blank place sometimes, I would put it down.

Cross-Q. 145. When did you buy this book?

A. I can't say positive, but it was the last of 1874 or beginning of 1875.

Cross-Q. 146. The entries read in your eighty-ninth answer are from the tenth and eleventh ruled pages of the book. On the fifth ruled page I find this entry:

"Commenced to working for Moses Evans the third of April by the month for sixteen dollars a month."

When was that entry made, and what year does it refer to?

A. This here was put down in mistake. This was made the same time—1875. Then I went on further and marked it down correct—1875, first day of April.

Cross-Q. 147. In the entry which was read in your 90th answer, and which is on the twenty-third page of the book, the heading "1875" looks quite different from the rest—is much blacker, and the gloss of the pencil is not yet worn off; is not that the fact?

A. It is much brighter; yes, sir.

Cross-Q. 148. How does that happen?

A. That I aint able to tell.

Cross-Q. 149. That entry and all the entries that have been put in are in pencil, are they not; and the whole book, with the exception of two or three small entries, is in pencil, is it not?

A. Yes, sir.

Cross-Q. 150. In the entry put in your ninetieth answer the part which now reads "for Moses Evans the 1 day of April" was originally written the figure "3," and then the figure "1" written over the figure "3;" is not that the fact?

A. Yes, sir; the reason of that is that by having the "3" over here [*indicating the entry on page five, quoted in the one hundred and for-*

ty-sixth question], I made the mistake again, and then rubbed the "3" out and wrote "1" over it.

Cross-Q. 151. Then you mean to say that the error in this entry on page twenty-three happened because you copied from the first and still got the day wrong, and afterwards corrected a figure "3" to a figure "1;" is that the fact?

A. Yes, sir.

Cross-Q. 152. Now, can you tell me why you made that entry on page twenty-three when you already had it on page five?

A. Because it was a mistake over here [*referring to page five*], and I transferred it to over here [*referring to page twenty-five*] to correct it.

[*The examiner certifies that the book is not paged, but for convenience he has marked in red ink the numbers of the pages referred to in the examination.*]

Cross-Q. 153. Then instead of correcting the entry on page 5, by writing "first" instead of "third," you turned over eigtheen pages of blank paper, and on the twenty-third page wrote the entry again, still writing it "the 3 day;" is that the fact?

[*Objected to as assuming that the intervening eighteen pages were blank at that time, in* 1875*; whereas, so far as we know, a part of them may not have been blank.*]

A. I don't understand that. [*Question repeated.*] Yes, sir.

Cross-Q. 154. Do you remember when you made that entry on page twenty-three?

A. In 1875.

Cross-Q. 155. When did you make the entry on page five?

A. In 1875, too.

Cross-Q. 156. In what time of the year did you make that entry on page five.

A. It was in April, but I can't tell you what date.

Cross-Q. 157. How soon after that did you make the entry on page twenty-three?

A. I cannot tell how soon after that it was.

Cross-Q. 158. Give me your best recollection about it?

A. After finding here that I hadn't the number of months here, [*page five*], I changed it and put it all down here, [*page twenty-three.*]

Cross-Q. 159. Then you made that entry on page twenty-three after you quit working for your father, did you?

A. No, sir.

Cross-Q. 160. How could you make the entry "worked seven months" before you had done it?

A. I didn't understand the question; the one on page twenty-three was made after I left my father.

Cross-Q. 161. How soon after?

A. I don't recollect how soon; it was the time I lived with Knaub.

Cross-Q. 162. Why did you turn over and leave a number of blank pages in making that entry?

[*Objected to as immaterial, and already fully explained by the witness in his* 144*th answer.*]

A. Because I wasn't very particular where I put it, just so that I could remember it.

Cross-Q. 163. You already had, on page 8, an entry as follows: "Quit working by the month on the 21 of October;" was that the time when you quit working for your father?

[*Objected to as assuming that the entry on page* 8 *was already in the book at that time.*]

[*Before the objection was stated by the defendant's counsel witness answered the question as follows:*]

A. No, sir; that was not in that year

Cross-Q. 164. What year was that that is referred to in the entry on page 8?

[*Objected to as not having been referred to in the direct examination.*]

A. I cannot tell you.

Cross-Q. 165. Was that work for your father that is referred to on page 8?

[*Same objection.*]

A. I don't know whether it is or not.

Cross-Q. 166. Then you don't know whose work that was, nor when it was done, nor what year it refers to?

A. No, sir; I don't remember it.

Cross-Q. 167. Are you able to say whether it does or does not refer to the work you did for your father in 1875?

A. No, sir; if that was done it was done by mistake—in 1875. I mean on the 8th page "quit working by the month on the 21st of October." If it was done at all it was done in mistake and afterwards

penciled out; I know I have made a great many mistakes in this book and afterwards corrected them.

Cross-Q. 168. What was the mistake, if there was one?

A. I don't know.

Cross-Q. 169. Didn't you quit working for your father October 21, 1875?

A. No. sir.

Cross-Q. 170. Didn't you quit working by the month for him October 21, 1875?

A. No, sir.

Cross-Q. 171. Do you feel very sure about that?

A. Yes, sir.

Cross-Q. 172. Did you work your full seven months up to November 1, 1875, as stated in the entry on the twenty-third page?

A. No, I lost some time in the summer.

Cross-Q. 173. Except the time you lost in the summer, did you work for him by the month clear up to the end of your seven months?

A. I don't know whether I counted the days off or not that I missed.

Cross-Q. 174. Did you work for him by the month so late in the fall that the last of it was seven months from the time that you began?

A. Yes, sir; I think so.

Cross-Q. 175. The entry on page twenty-three states that in 1875 you worked for him seven months, at sixteen dollars a month; is that a fact, or is it not?

A. I was to have sixteen dollars a month, but I didn't get it.

Cross-Q. 176. Did you work for him seven months except for the time you were off in the summer?

[*Objected to as substantially a repetition of the one hundred and seventy-third question.*]

A. I didn't count the time off. It would have been seven months' work by the month, if I had not lost time in the summer.

Cross-Q. 177. You would have been paid for seven months' work if you had not been docked for the time lost in the summer, would you?

A. Yes, sir.

Adjourned until October 24, 1883, at ten, A. M.

October 24, 1883.

Examination resumed pursuant to adjournment. Present, same counsel.

Cross-examination of Andrew Evans, by Mr. Storrow, continued.

Cross-Q. 178. In your 34th and 35th answers you undertook to fix the time when you began to work for Mr. Knaub. Is there any entry in your book which enables you to fix that time? If so, please point it out.

A. No, sir; I have not the time in.

Cross-Q. 179. How do you know that it was the 8th of November, 1875?

A. Because I quit working for my father on the 6th of November, and the 7th was Sunday; and on Monday morning I commenced working for Mr. Knaub.

Cross-Q. 180. Is there any entry in your book that tells you when you quit working for your father at that time?

A. Not more than the date of the last day.

[*Witness refers to the last entry on page eleven of his memorandum book, given in his 89th answer, to wit*: "6 *to one day* 1.00."]

Cross-Q. 181. On page eight of you book is the entry, "quit working by the month on the 21 of October," which you have already stated does not refer to work done in 1875. The next entry about work in your book is that quoted at the beginning of your 89th answer, to the effect that on October 21st you began two and a half days' work on Underwood's cistern. The next entries about work in your book are on page eleven, also quoted in your 89th answer, that on October 25 you began husking corn for your father, and worked at it every day till the evening of November 6. It appears to me very difficult not to believe that all the entries I have now referred to on those three pages were right along in the same year. I should like to know what you can say about that, and to have you explain how these different times of work tally in so well together if they were not in the same year.

A. The reason of some of them is because I was going to quit working for my father a couple of times by the month, and then the last I put down by the day—the last days I worked for him. That is the reason these different pages are marked that way.

Cross-Q. 182. But you told us several times yesterday that you

didn't quit working for your father by the month on the 21st of October, 1875, and that the entry on page eight did not refer to what you did in that year; is that still your recollection, or have you changed your mind about it?

A. I didn't quit then. The reason of this date being here—this date on page eleven here is correct by the day—this date, 6th of November—that is, it is marked down here correct with the date when I stopped working for my father. The time I marked this I thought I was working by the day, and afterwards it was marked by the month.

Cross-Q. 183. Then that entry on page eight was an entry which wasn't true; is that the fact about it?

A. I said yesterday I couldn't give an account of that.

Cross-Q. 184. Will you point out the entry of any work of yours that is found nearest the beginning of the book?

A. Yes, sir; here it is on page two; there is an entry of a number of figures on page one, but it is almost rubbed out, and I cannot read it.

Cross-Q. 185. That entry on page two is headed "January," giving no year; what year was that work done?

A. January, 1875.

Cross-Q. 186. Point out the next entry in the book that refers to any work of yours?

A. On the third page is one.

Cross-Q. 187. That is headed "March," and no year is given; in what year do you think that work was done?

A. That was March, 1875.

Cross-Q. 188. Point out the next entry in the book that relates to any work of yours.

A. There is one on page four.

Cross-Q. 189. That begins "April 3rd;" no year is given; what year do you think that was?

A. That was the year 1875.

Cross-Q. 190. That entry on page four appears to be for days' work every day through and including April 14; I understood you to say that you were working for your father by the month from April 1; how did you happen to be charging somebody by the day during the first two weeks?

A. Because me and my father had no bargain at that time, and afterwards it was fixed by the month, that is, that I went back to the first of April and fixed it by the month.

Cross-Q. 191. Then when we want to find out what the facts are, we have to rely on your memory to correct the errors in the book; is that the fact?

[*Objected to as assuming that the entry on page four of the memorandum book was an error, whereas, on the contrary, it appears from the testimony of the witness that it was in fact true at the time, and that the work then done, which was entered by the day, was afterwards, by an arrangement with his father, reckoned and accounted as by the month.*]

A. Yes, sir.

Cross-Q. 192. On the page of your memorandum book now numbered twenty-four, I find the following entry, which is all there is on that page:

"1876
Mar 15 Commenct to
work for Moses
Evans on the
15 day of March

And worked
12 month
for 10 dollars
a month"

Is that true, or is it not true?

A. That is correct; yes sir.

Cross-Q. 193. Yesterday you testified in your 100th to the 106th answers that you worked six months for your father in 1876; is this a case where your memory ought to correct the book, or the book your memory?

[*Objected to as not fairly stating the testimony of the witness yesterday.*]

A. My memory now is that the book is right.

Cross-Q. 194. On the next page, numbered 25, the only entry is:

"1877
Mar 15 Commenct
to work for Moses
Evans the 15th day
of March."

You testified yesterday that after you stopped working for your father, in 1876, you commenced working for him again in the spring of 1878; is that a case where your memory is right or the book is right?

A. The book.

Cross-Q. 195. How many different houses did your brother live in Milltown?

A. Three that I know of.

Cross-Q. 196. Won't you describe them?

A. I don't know who owned the houses.

Cross-Q. 197. Describe their looks, and what they were built of, and how they were arranged.

A. They were two old plastered houses—I mean plastered on the outside—the other one I don't remember.

Cross-Q. 198. Did he and his wife live in these houses alone, or did any other family live with them?

A. A family lived in one house with them.

Cross-Q. 199. How far apart were these three houses from each other?

A. As near as I can state, two of them were about one hundred yards apart.

Cross-Q. 200. What other houses were there between those two?

A. I don't remember.

Cross-Q. 201. How far of was the other house from those two?

A. The one was about fifty yards, as near as I can tell, and the other was a hundred and fifty as near as I can tell.

Cross-Q. 202. On the Saturday when you think you drove down to Milltown, as you have testified, what time did you get there?

A. Between seven and eight o'clock in the evening, as near as I can tell.

Cross-Q. 203. Did it take you four or five hours to drive down there from your father's?

A. I didn't keep no account of the hours.

Cross-Q. 204. You have already testified that you started about three o'clock; how could you testify to that if you didn't keep an account of the hours?

A. I said yesterday, as near as I could tell, I started about three o'clock.

Cross-Q. 205. Did you visit anybody in Milltown that Saturday evening?

A. No one but my brother Jacob and his family.

Cross-Q. 206. How many brothers and sisters have you got, and what are their names?

A. Three brothers: Jacob Evans, David Evans, and William F. Evans; and four sisters: Ann Elmira Evans, Sarah Elizabeth Evans, Margaret Jane Erb, and Agnes Celesta Evans.

Cross-Q. 207. I find on looking at your 15th answer that you did not state that you started about three o'clock as near as you could recollect; the question and answer were as follows:

"*Q.* 15. What time of day was it when you went down to Milltown on that occasion?

"*Ans.* In the afternoon, about three o'clock."

Do you now wish to qualify that answer?

A. No, sir.

Cross-Q. 208. Then, is it true that you were between four and five hours driving down?

A. Yes, sir.

Cross-Q. 209. Is your memory pretty clear about that?

A. Yes, sir.

Cross-Q. 210. Why couldn't you have said so in answer to my 203rd question; wasn't your memory as clear about it then as it is at this moment?

A. No, sir.

Cross-Q. 211. Where did you go that Sunday besides Drawbaugh's shop?

A. I don't remember. I don't think we went anywhere else.

Cross-Q. 212. Have you got any distinct recollection as to whether you did or did not go anywhere else?

[*Objected to as answered in the last answer.*]

A. No, sir.

Cross-Q. 213. How long did you stay at Drawbaugh's shop, if you have got any recollection about that?

A. About an hour, as near as I can tell.

Cross-Q. 214. What time of day was it?

A. I don't remember.

Cross-Q. 215. Was it before dinner or after dinner?

A. I don't remember whether it was before or after.

Cross-Q. 216. What did you do that day before you went to his shop?

A. I didn't do anything; it was on Sunday morning.

Cross-Q. 217. Do you mean that it was on Sunday morning that you went to his shop?

A. No, sir.

Cross-Q. 218. What did you do that day after you had been to his shop?

A. I didn't do anything.

Cross-Q. 219. Have you got any distinct recollection as to whether you went out of the house that day, except when you went to his shop; and if so, where did you go to?

A. I went out of the house to go home.

Cross-Q. 220. Is that the best answer you can give to my question?

[*Objected to as mere badgering, the answer being a fair answer to the question.*]

A. Yes, sir.

Cross-Q. 221. Who first proposed to go to Drawbaugh's shop that day?

A. I don't remember.

Cross-Q. 222. Did you start from the house that day for the purpose of going there, or were you out walking?

A. We started for the purpose of going there.

Cross-Q. 223. Had you ever been there before?

A. No, sir.

Cross-Q. 224. Did your brother Jacob tell you that if you would go down there you would probably see a talking-machine?

A. Not as I can remember of.

Cross-Q. 225. Was the subject of talking-machines mentioned that day before you got to the shop?

A. Not as I can remember.

Cross-Q. 226. What did all you five start from the house and go down there for?

A. To see Mr. Drawbaugh's shop.

Cross-Q. 227. What particular things were mentioned that you were likely to see there?

A. Talking-machine, electric clocks, telegraph operator, patent axles.

Cross-Q. 228. Were these things mentioned before you got to the shop?

A. Not as I can remember.

Cross-Q. 229. Before you started, what did you expect to see there; or what was mentioned that you would be likely to see there?

A. Nothing, that I remember of.

Cross-Q. 230. How came the proposal to be made to go down to the shop?

A. I don't know, more than that we talked about going down to see Mr. Drawbaugh's shop.

Cross-Q. 231. Had you known Drawbaugh before that?

A. No, sir.

Cross-Q. 232. Had you heard about him before that?

A. Not as I can remember.

Cross-Q. 233. How did you get into the shop that day; was it open?

A. No, sir; we opened the door and got in.

Cross-Q. 234. Who was inside the shop when you got there?

A. Mr. Drawbaugh.

Cross-Q. 235. What was he doing?

A. I don't remember.

Cross-Q. 236. Was he at work?

A. No; I don't suppose he would work on Sunday.

Cross-Q. 237. I don't want your supposition as to his habits; I want to know whether you recollect whether he was at work or not?

A. I don't recollect; no, sir.

Cross-Q. 238. Who else was in the shop while you were there on that visit?

A. My brother Jacob and my two sisters.

Cross-Q. 239. Who else?

A. Nobody.

Cross-Q. 240. What part of the shop did you go to first?

A. I suppose it is called the front part.

Cross-Q. 241. Which story did you go into?

A. I don't remember.

Cross-Q. 242. How many stories did you go into that day?

A. I only went into one.

Cross-Q. 243. Tell me what you saw in that one story?

A. Talking-machine, electric clocks, telegraph operator, and patent axles.

Cross-Q. 244. Do you remember anything else that you saw?

A. No, sir; no more than what belongs to the talking machine.

Cross-Q. 245. What was there that belongs to the talking-machine.

A. I can't remember the names of them.

Cross-Q. 246. Describe them?

A. I can't describe them more than a couple of parts of them. One is a small instrument made out of walnut wood,—walnut, as far as I can remember. Part of it is a part of an old tin can, on some wires. And one part that I can remember, is a piece of board with two posts on

upright. One part of it was made of walnut. That is about as far as I can remember.

Cross-Q. 247. You have apparently endeavored to describe some of the instruments that were shown to you yesterday; do you remember anything else that you saw, and that you understood belonged to the talking-machines?

[*First clause of question objected to as argumentative and mere inference.*]

A. I couldn't describe them; I know I seen them all.

Cross-Q. 248. What do you mean by "all?" All he had?

A. Yes, sir.

Cross-Q. 249. How do you know that you saw all he had; did he tell you so?

A. No, sir.

Cross-Q. 250. What do you mean then by saying that you saw them all?

A. All of one machine.

Cross-Q. 251. Did he tell you that all these parts belonged to one machine?

A. No, sir.

Cross-Q. 252. Did you know that all those parts that you have mentioned belonged to one machine?

A. Yes, sir.

Cross-Q. 253. How did you know that?

A. He had them connected together to use the machine.

Cross-Q. 254. Is your recollection pretty distinct about that?

A. Yes, sir.

Cross-Q. 255. How did he connect them together?

A. Partly with wire.

Cross-Q. 256. Did he connect all of them together at the same time.

A. Yes, sir.

Cross-Q. 257. Is your recollection pretty distinct about that?

A. Yes, sir.

Cross-Q. 258. Which part did your brother Jacob listen at?

A. I don't remember what part.

Cross-Q. 259. Did he hold in his hand the thing he listened at, or was it on a table, desk, or bench?

A. I don't remember.

Cross-Q. 260. What instrument, or what part, did Drawbaugh speak into?

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A. I don't remember.

Cross-Q. 261. When he went out of the room to speak did he take out with him either of the instruments that you identified yesterday, and if so which one?

A. I don't remember which one.

Cross-Q 262. Do you remember whether he took out of the room either of those you identified yesterday?

A. No, sir.

Cross-Q. 263. Did you see what instrument or what part he spoke into?

A. I don't remember.

Cross-Q. 264. Did you not have curiosity enough to go out and see what he was talking into?

A. No, sir; I didn't go.

Cross-Q. 265. Did any of the party go out to him to see what he was talking into?

A. Not as I remember of.

Cross-Q. 266. How long was the talking going on through this machine?

A. I don't remember.

Cross-Q. 267. What did he say into it?

A. I don't remember; I didn't listen.

Cross-Q. 268. Didn't your brother tell you what he heard?

A. I don't remember.

Cross-Q. 269. Who else listened besides your brother?

A. I don't remember.

Cross-Q. 270. Did anyone listen besides your brother?

A. Not as I remember of.

Cross-Q. 271. How long did your brother listen?

A. I don't know.

Cross-Q. 272. What is your best recolleetion about it, if you have got any?

A. I hav'nt got any.

Cross-Q. 273. Did a talking-machine by which a man could talk over a wire across the shop and across the Atlantic ocean appear to you to be something wonderful, or not?

A. Yes, sir.

Cross-Q. 274. But you didn't have curiosity enough to go and see

what he talked with and into, nor to listen yourself and hear, did you?

A. No, sir.

Cross-Q. 275. You have said that he was pretty enthusiastic about it; did Drawbaugh talk to you a good deal about it, and what it could do?

A. I don't remember.

Cross-Q. 276. Do you remember anything he told you about it?

A. No, sir.

Cross-Q. 277. Yesterday in your 71st answer you said that he seemed pretty enthusiastic about it. What made you think he was enthusiastic about it?

A. He was showing it to us.

Cross-Q. 278. He was showing you a good many other things that day, wasn't he?

A. Yes, sir.

Cross-Q. 279. Was he any more enthusiastic about the talking machine than about the other things that he showed you?

A. He appeared to be; yes, sir.

Cross-Q. 280. But his enthusiasm didn't excite you enough to lead you to take the trouble to listen at the machine, did it?

A. No, sir.

Cross-Q. 281. How did he show his enthusiasm?

A. He appeared to be in pretty big glee, and appeared to be more interested in the machine than he was with any of the rest.

Recess until 2 *P. M.*

Examination resumed at 2 *P. M.*

Cross-Q. 282. Can't you remember anything that Drawbaugh said about his talking-machine?

A. No, sir.

Cross-Q. 283. Didn't he tell you that he wasn't in the habit of showing it to people, and that he only showed it to you as a special favor?

A. No, sir; not as I remember.

Cross-Q. 284. Tell me how the various parts of the talking machine were connected together?

A. I can't describe exactly. As near as I can tell, the instruments were connected with a wire.

Cross-Q. 285. In your 255th answer you said that they were "connected *partly* with wire." What do you mean by that?

A. I only seen part of the wire; I guess that was it.

Cross-Q. 286. Whereabouts in the shop did you see these?

A. In the lower story.

Cross-Q. 287. How big a room were they in, and what else was there in the room?

A. I don't remember the size of the room; I don't remember what was in at that time.

Cross-Q. 288. Give me your best recollection as to how big the room was?

A. It might have been about fourteen by twelve.

Cross-Q. 289. What part of the shop did you see the telegraph machine in?

A. I suppose it is called the front part of the shop.

Cross-Q. 290. Was it in the same part of the shop where you saw the talking-machine, or in a different room?

A. In the same part.

Cross-Q. 291. How many telegraph machines did he show you or did you see?

A. Only one that I can remember of.

Cross-Q. 292. Did he work it for you?

A. Yes, sir.

Cross-Q. 293. What did he do with it?

A. Put it in motion.

Cross-Q. 294. What kind of a looking thing was it?

A. I can't describe it any more.

Cross-Q. 295. How did he put it in motion?

A. I don't know; he went into another room.

Cross-Q. 296. What kind of a motion did it make?

A. The machinery in the room where I was made a kind of a noise; that is all I could tell about it.

Cross-Q. 297. What kind of a noise—can't you describe something about it?

A. No, sir.

Cross-Q. 298. Whereabouts in the room was it when you saw it?

A. It was either setting on a chest or a workbench—I don't know which—the machine that I saw.

Cross-Q. 299. Did Jacob tell you that he had known of talking machines before he saw them that day?

A. I don't remember.

Cross-Q. 300. Did Drawbaugh talk to you about the talking-machine, and explain something about it to you before he talked through it?

A. Not as I remember.

Cross-Q. 301. Did he talk to you about it, or explain to you about it, after he talked through it?

A. Not as I remember.

Cross-Q. 302. When was it that he showed the enthusiasm about the talking-machine that you have spoken of?

A. I don't understand that.

Cross-Q. 303. You have said that he showed a good deal of enthusiasm about the talking-machine—was in big glee about it. Was that before he talked through it, or after he talked through it?

A. It was while he was showing it to us.

Cross-Q. 304. You have said that you were there about an hour. How much of that time was occupied in showing you the talking-machine?

A. I don't know exactly, but as near as I can tell it was about half of the time.

Cross-Q. 305. What did he say to you about the other things that he showed you?

A. I don't remember.

Cross-Q. 306. Whereabouts in the shop were the other things that he showed you?

A. What things do you mean?

Cross-Q. 307. I mean everything else that you remember he showed you on that visit.

A. I saw the axles in another department; there may have been one or two clocks in the same room I saw the talking-machine in, but I can't remember.

Cross-Q. 308. What kind of a department or room were the axles in?

A. It was on the same floor, only in another department—a larger department.

Cross-Q. 309. What kind of a department or room was that where the other clocks were that were not in the room with the talking-machine?

A. It was a smaller department.

Cross-Q. 310. What did he tell you about the clocks?

A. He told us they were electric clocks.

Cross-Q. 311. When did you first know that you were going to be wanted as a witness in this case?

A. It was in the summer.

Cross-Q. 312. Who told you?

A. Mr. Drawbaugh and Mr. Hill.

Cross-Q. 313. What part of the summer was that?

A. I don't remember.

Cross-Q. 314. Before harvest or after harvest?

A. Before harvest.

Cross-Q. 315. Where was it that they saw you and told you this?

A. At Louis Bearinger's.

Cross-Q. 316. Who had spoken to you before as to whether you knew anything about Drawbaugh's talking machines?

A. My brother Jacob.

Cross-Q. 317. When was that?

A. As near as I can recollect, it was last March.

Cross-Q. 318. Where was it?

A. At my home.

Cross-Q. 319. How far do you live from where he lives?

A. As near as I can give it, it is about nine miles and a half or ten miles.

Cross-Q. 320. How did he get over from his place to yours, at that time?

A. He drove over with a horse and buggy.

Cross-Q. 321. His own horse and buggy?

A. No, sir.

Cross-Q. 322. Do you know where he got the horse and buggy?

A. No, sir.

Cross-Q. 323. Who was with him?

A. His little son, George Evans.

Cross-Q. 324. How long did he stay with you on that visit?

A. He came there on Saturday afternoon some time, and left on Sunday at noon.

Cross-Q. 325. How long before that had he been at your house?

A. I don't remember.

Cross-Q. 326. Had he ever been at the house where you live now?

A. Yes, sir; he was there once.

Cross-Q. 327. What did he come for then?

A. He was attending Dillsburg camp, and he stayed over night with me.

Cross-Q. 328. How long have you lived in that house?

A. It will be two years in the spring.

Cross-Q. 329. Who else has spoken to you about Drawbaugh's talking-machines within the last year?

A. No one, that I know of.

Cross-Q 330. Do you mean that the only persons that you have talked with about Drawbaugh's talking-machines before this week were your brother Jacob, at the one visit you have spoken of, and Mr. Hill and Mr. Drawbaugh, at their one visit that you have spoken of?

A. That is all I know of; yes, sir.

Cross-Q. 331. Have you seen your brother Jacob since then.

A. No, sir.

Cross-Q. 332. Where you ever at Milltown while your brother lived there, except once in 1875 and once in 1879?

A. Yes, sir.

Cross-Q. 333. At what other times?

A. I don't recollect the date of the year that I was down that time?

Cross-Q. 334. Did you stay over night that time?

A. Yes, sir.

Cross-Q. 335. Who was at your brother's at that visit you don't recollect the year of?

A. Nobody but my brother and I that I know of.

Cross-Q. 336. Were you ever at your brother's at Milltown except those three times?

A. Not that I remember of.

Cross-Q. 337. You say that the clocks were in another department from that where you saw the talking-machine at Drawbaugh's shop; did you go into that other department?

A. Yes, sir.

Cross-Q. 338. Did the rest of your party go in?

A. I don't remember.

Cross-Q. 339. Whereabouts in that room were the clocks—standing on a bench, or how?

A. I don't remember.

Cross-Q. 340. Were they going?

A. Yes, sir; some of them.

Cross-Q. 341. Did Drawbaugh take you into that room alone and explain the electric clocks to you?

A. I do not know whether we were by ourselves or not.

Corss-Q. 342. Did he show you any magnets in the clocks?

A. Not as I remember of.

Cross-Q. 343. Did you see one clock or several in there?

A. I seen several clocks.

Cross-Q. 344. How big were they—what sort of looking things were they?

A. Some of them had face and hands on the same as any other clock, and some had frames on them and some had not.

Cross-Q. 345. Did he show you the inside works of any of them?

A. I don't remember whether it was one or more.

Cross-Q. 347. When were you last in Milltown?

A. As near as I can tell it must have been about 1879.

Cross-Q. 348. The visit you have spoken of that you couldn't remember the year of—was that before the visit of 1879, or after?

A. After.

Cross-Q. 349. Did you go to Drawbaugh's shop on that third visit?

A. No, sir; not as I remember.

Cross-Q. 350. What did you do at Milltown on that third visit?

A. I visited my brother Jacob.

Cross-Q. 351. Did you stay in the house with him all the time, or where did you go?

[*Objected to as immaterial.*]

A. I don't remember whether we stayed in or whether we walked out sometimes, or not.

Cross-Q. 352. What season of the year was it?

[*Same objection.*]

A. I don't remember any more.

Cross-Q. 353. How long after your 1879 visit was it?

[*Same objection.*]

A. I don't know.

Cross-Q. 354. What is your best recollection about it?

[*Same objection.*]

A. My best recollection is that all I remember is, that I was down; I don't know what part of the year or what year.

Cross-Q. 355. Was it the same year as the 1879 visit?

[*Same objection.*]

A. I don't know.

Cross-Q. 356. How long did you stay there on this third visit?

[*Same objection.*]

A. I went down on Saturday, and went home on Sunday.

Cross-Q. 357. In your 344th answer you said that some of the clocks you saw in the other room at Drawbaugh's had faces and hands the same as other clocks, and some had frames over them. What kind of face and hands did they have?

A. I don't know.

Cross-Q. 358. Were the frames light colored frames or dark colored frames?

A. As near as I can tell they were part dark and part light.

Cross-Q. 359. When you left the shop that day did you go right back to the house?

A. I don't remember.

Cross-Q. 360. When you went into the room where you saw the talking-machines were they on a bench or fastened up to the wall, or how?

A. I don't remember.

Re-direct by Mr. Hill:

Q. Q. 361. If you commenced working for your father on the 15th day of March, 1876, and worked twelve months, as stated in your memorandum book, you must have worked till about the 15th day of March, 1877. Is that your recollection or not?

A. Yes, sir.

Q. Q. 362. Then, according to the same memorandum book, you commenced on the 15th day of March, 1877, to work for him again. What is your best recollection as to how long you worked for him in 1877?

A. I don't recollect how long I worked for him in 1877.

Q. Q. 363. In your 56th answer you state that when you saw Mr. Drawbaugh at his shop that Sunday in 1875 your sister Sarah, your sister Jane, your brother Jacob and his wife were with you. In your 238th and 239th cross-answers you mention your brother Jacob and your two sisters as being there with you, but say that nobody else was there. That leaves us in doubt whether Jacob's wife was there or not.

Will you tell us whether Jacob's wife was there at the shop with you and your two sisters and Mr. Drawbaugh, or not?

A. She was; yes, sir.

Q. Q. 364. In your 69th and 70th answers you state that during the time you were at Mr. Drawbaugh's shop that Sunday he (Mr. Drawbaugh) said, "I can take this machine and talk clean out to Europe across the ocean;" and that he said it was worked by electricity; is it a fact that he made those statements in your hearing while you were there that day?

[*Question objected to for the same reasons that questions* 69 *and* 70 *were objected to, to wit, that it is leading and calls for testimony that is not competent and not in rebuttal.*]

A. Yes, sir.

Q. Q. 365. In your 276th cross-question you were asked if you remembered anything that Mr. Drawbaugh told you about the talking-machine, and you answered "No, sir." Will you explain why you gave that answer, if Mr. Drawbaugh told you that he could take the machine and talk clean out to Europe with it across the ocean, and that it was worked by electricity, as you had already testified, and as you now testify again to be the fact?

[*Same objection.*]

A. I must have forgotten the words when I was asked the question what Mr. Drawbaugh told me.

Q. Q. 366. Do you remember being asked by Mr. Storrow that question—whether you remembered anything he told you about the talking-machine?

[*Same objection.*]

A. No, sir.

Q. Q. 367. Do you know whether you understood what the question called for when you gave your answer to it?

[*Same objection.*]

A. I don't suppose I did, or I wouldn't have given that answer.

Q. Q. 368. When your brother Jacob went to see you last spring, before you had talked with Mr. Drawbaugh or Mr. Hill about this case, did you tell him about your remembering that Mr. Drawbaugh said he could talk to Europe clear across the ocean with the talking-machine?

[*Objected to as above, and as not proper on reëxamination.*]

A. Yes, sir; I did.

Q. Q. 369. Is this the first time you ever testified as a witness in a law-suit or not?

[*Same objection.*]

A. Yes, sir; the first time.

Q. Q. 370. If I understand your testimony correctly, there where three rooms on the floor of Mr. Drawbaugh's shop where you were on that Sunday in 1875, to wit: A large room in which you saw the patent axles, and two smaller rooms in which you saw the clocks, and talking-machines, and telegraph; do I understand you correctly?

A. Yes, sir.

Q. Q. 371. Do you remember how those rooms were situated?

[*Same objections as to Q.* 368.]

A. When you came into the first one the small room was to the left of us and the large room in front of us.

Q. Q. 372. When you entered the building through the door, did the outside door open into one of these small rooms, or into a passage, or how, so far as you recollect?

[*Same objections.*]

A. Into one of the small rooms.

Q. Q. 373. And the other small room was to your left and the large room right ahead; is that the idea?

[*Same objections.*]

A. Yes, sir.

Q. Q. 374. How many rooms do you remember seeing talking-machines in at that time?

A. Only one, that I remember.

Q. Q. 375. Which one was that?

[*Same objections.*]

A. The first room as you came in.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 24th day of October, 1883.

FRED. M. OTT,
Examiner.

ANDREW EVANS.

AMBROSE KNAUB, *being produced, sworn and examined, saith:*

Examined by Mr. Hill:

My age is 52, residence Dillsburg, Carroll township, York county, Pa.; occupation, farmer.

Q. 1. Does your farm lie near the Aleck Underwood farm?

A. Yes, sir; adjoining lands.

Q. 2. Do you remember when you first began to live on the farm which you now occupy?

A. Yes, sir; in 1875.

Q. 3. About what time in 1875 did you move on to that farm?

A. On the second day of March.

Q. 4. Do you know Mr. Moses Evans and his son, Andrew Evans, who lived in your vicinity?

A. Yes, sir.

Q. 5. Mr. Moses Evans formerly occupied the Aleck Underwood farm for awhile, did he not?

A. Yes, sir.

Q. 6. Do you remember when he moved on to the Aleck Underwood farm?

A. In 1875.

Q. 7. About the same time that you moved on to your farm?

A. No, sir; he moved on the beginning of April, to the best of my knowledge.

Q. 8. Did you ever employ Andrew Evans?

A. Yes, sir; I had hired him for a month.

Q. 9. When was that?

A. He come on in the beginning of November, 1875.

Q. 10. By the beginning of November, do you mean the first day, or the early part of the month?

A. I mean the early part of the month; I don't remember the exact day.

Q. 11. Do you remember what part of the week it was when he began to work for you?

A. He came on a Monday.

Q. 12. Do you remember what was the first work that he did for you?

A. Husking corn.

Q. 13. State whether or not you ever employed Andrew Evans on

your farm at any other time than the month that he worked for you in 1878.

A. No, sir; not to the best of my knowledge.

Q. 14. Whan he began to work for you, how far along had you got with your corn-husking?

A. I suppose we were pretty nearly, if not fully, half done when he came.

Q. 15. Did he live at your house while he worked for you that month?

A. Yes, sir.

Q. 16. Do you remember anything about his having a horse and buggy at that time?

A. Yes, sir.

Q. 17. Where did he keep the horse and buggy while he worked for you?

A. At my place.

Q. 18. Do you know where he went to work after his month was out with you?

A. Yes, sir; he went to work with my father-in-law, Andrew Spahr.

Q. 19. How long did he work for him to the best of your knowledge?

A. Until spring—from fall—the time he left me.

Q. 20 While he was working for you that month in the fall of 1875, and while his horse and buggy were kept at your place, did you have any occasion to borrow his buggy? If so, for what purpose?

A. Yes, sir; I borrowed his buggy to go to my landlord's funeral, Mr. Jacob B. Hurst. He died at Mechanicsburg.

Q. 21. Do you remember anything that was going on of interest at the Aleck Underwood farm that summer and fall?

A. Yes, sir; he built a barn.

Q. 22. Did you render any assistance in the building of that barn that summer?

A. Yes, sir; I helped to raise it.

Q. 23. Have you any recollection of Andrew Evans taking his horse and buggy and driving off to make a visit somewhere, during that month when he worked for you?

A. Yes, sir.

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Q. 24. Did you understand at the time where he went to visit, and whom he went to visit?

A. His brother, down at New Cumberland some place.

Q. 25. Did anybody go with him on that visit?

A. He took two of his sisters along.

Q. 26. Did they three start from your house, or did he drive from your house and get them somewhere else?

A. He started from our place, and I think that his sisters met him either at home or at the lane; that is the best of my knowledge.

Q. 27. Do you remember how long he was gone on that visit before he returned to your house?

A. From Saturday dinner till Sunday evening.

Q. 28. Do you remember whether that visit which Andrew and his sisters made to their brother was before, or after Mr. Hurst's funeral?

A. Afterwards.

Q. 29. About how long afterwards?

A. I think that the visit was the second week after Mr. Hurst was buried, to the best of my knowledge. He didn't go the first Saturday after Mr. Hurst's funeral, but I think he went the Saturday following that.

Q. 30. Do you know the name of his brother whom he and his sisters visited at that time?

A. His brother Jacob.

Q. 31. When Andrew returned to your house at the end of that visit to his brother Jacob, did he say anything about what he had seen or heard of during his visit, or any particular places that he had been at during his visit?

A. Yes, sir.

Q. 32. Mention anything that he said he had seen, or any place that he said he had been at on that visit, that produced any strong impression on your mind at the time, and which you now remember?

A. He told me that him and his brother had been at a shop of Mr. Drawbaugh's; that they had invented a machine that they could talk through.

[*Objected to as incompetent and not in rebuttal.*]

Q. 33. That who had invented it?

A. Mr. Drawbaugh.

Recess until 7 P. M.

Examination resumed at 7 P. M.

Q. 34. Did Andrew at that time, while he was living at your house, tell you whether or not he, himself, had seen during his said visit Mr. Drawbaugh's machine that they could talk through?

[*Same objection, and objected to as leading.*]

A. Yes, sir; he said he was in the shop, and seen the operation of it, and heard them talking through it.

Q. 35. Do you remember whether or not he told you anything at that time about how far the machine would operate?

[*Same objection.*]

A. He said some distance, but he didn't say how far.

Q. 36. Please look at the paper which I now hand you, and state whether it is the original lease under which you took possession of the farm on which you reside, and under which you have held since March, 1875.

A. Yes, sir; I have occupied that place under this lease ever since March, 1875.

[*The examiner certifies that the paper is a lease between Jacob B. Hurst and Ambrose Knaub, dated the 20th day of June, A. D.* 1874*; said lease to commence on the first day of April, A. D.* 1875*, and end on the* 31*st day of March, A. D.* 1876*; the lease is under seal and is witnessed by Joseph Leas. The subscribing witness is here present, and offers to testify that he wrote the lease on the* 20*th day of June,* 1874*, and has had it in his custody ever since it was signed.*

Mr. Hill offers to examine the witness as to these facts, and Mr. Storrow admits that he would so testify, and waives the examination.]

Q. 37. At the expiration of that lease, which ran only for one year, you held over without any other writing until the present time, did you?

A. Yes, sir; the old gentleman died before the time was up, and he told the executors before he died to let me remain under that lease as long as the widow lived; and so I am there yet under the old lease.

[*Cross-examination waived by Mr. Storrow.*]

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 24th day of October, 1883.

FRED. M. OTT,
Examiner.

AMBROSE KNAUB.

ELIZA KNAUB, *being produced, sworn and examined, saith:*

Examined by Mr. Hill:

I am the wife of Mr. Ambrose Knaub, who has just been examined as a witness in this case, and reside with him on the Hurst place near Dillsburg.

Q. 1. How long have you and your husband resided on the Hurst place, where you now live?

A. It was eight years last spring; we moved the second of March.

Q. 2. Do you remember the time that the large barn was built on the Aleck Underwood place?

A. Yes.

Q. 3. How long had you been living on the Hurst place when the Underwood barn was built?

A. We had just moved there that spring.

Q. 4. Do you remember when Mr. Hurst, (your landlord,) died?

A. Eight years ago this fall.

Q. 5. That would be the fall of 1875?

A. Yes.

Q. 6. Do you remember what hired man you had working on your farm at the time Mr. Hurst died?

A. Andrew Evans; I don't know whether he has two names or not.

Q. 7. Do you remember how long Andrew Evans worked on your farm at that time?

A. A month we had him.

Q. 8. State whether he ever worked for you at any other time or not, except that month.

A. I don't remember.

Q. 9. You don't remember of his ever working for you at any other time?

[*Objected to as leading.*]

A. No, sir.

Q. 10. Do you remember anything about Andrew Evans making a visit to his brother Jacob during the month when he (Andrew) lived with you?

A. Yes, sir.

Q. 11. Do you remember how he went—what kind of a conveyance?

A. In a buggy.

Q. 12. Whose buggy?

A. His own.

Q. 13. Where did he keep his horse and buggy?

A. At our place.

Q. 14. Do you remember whether any person went with him on that visit; and if so, who?

A. His sisters.

Q. 15. Was that visit made while he was working at your place in 1875?

A. Yes, sir.

Q. 16. Was it before, or after Mr. Hurst's death?

A. After.

Q. 17. About how long after?

A. I don't know, just.

Q. 18. Was it a long time after, or only a week or two?

A. No, sir; it wasn't long.

Q. 19. When Andrew came back from that visit which he and his sisters made to his brother Jacob at that time, do you recollect whether or not he spoke of anything, or curious things that he had seen on that visit?

A. He did talk about something that he had seen, but I didn't think anything about it—didn't know what he meant; he talked about something that he had seen that was something of a curiosity, but I didn't understand it.

Q. 20. Do you recollect anything about what it was, or what he said about it?

A. I don't know much about it; it was so long ago.

Q. 21. Do you recollect what he said it was for—what they did with it?

A. I don't remember no more.

Q. 22. Do you recollect whether he said whether it had anything to do with talking?

A. I don't remember such things.

Q. 23. Did you go to Mr. Hurst's funeral?

A. Yes, sir.

Q. 24. How did you go?

A. In a buggy.

Q. 25. Whose?

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A. Andrew Evans'.

[*Cross-examination waived by Mr. Storrow.*]

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 24th day of October, 1883.

FRED. M. OTT,
Examiner.

ELIZA KNAUB.

Adjourned to October 25, 1883, at 10 A. M.

October 25, 1883.

Examination resumed pursuant to adjournment. Present, same counsel.

HENRY KLUGH *being produced, affirmed, and examined, saith:*

Examined by Mr. Jacobs:

My age is fifty-seven; residence, near Franklintown, York county, Pennsylvania; occupation, carpenter.

Q. 1. Did you build a barn for Alexander Underwood on his farm near Dillsburg, York county? If so, when?

A. I done the carpenter work; yes, sir. It was in 1875.

Q. 2. Do you remember who occupied that farm at the time the barn was built?

A. I do; it was Moses Evans.

Q. 3. How long before the building of the barn did he take possession of the farm, if you know?

A. In the spring of that year, 1875, near the first of April.

Q. 4. If you have any book of original entry which shows the time when you did the carpenter work on that barn, will you please produce it?

A. I will. Here it is. The entry is on page 130.

Q. 5. I observe that on page 130 your account with Alexander Underwood begins under date January 5, 1875, and continues through certain days in that month and in February. Will you please state what the work charged under those dates was for?

A. For marking timber to be cut for the barn.

Q. 6. The next entry, I observe, is under the date April 14 to 18;

the account then continues through April, May, and part of June. Will you please state what the work thus charged was?

A. Hewing part of the timber for the barn, framing it, raising the barn, covering it, and making it ready to put his produce in.

Q. 7. When, then, was the actual work upon the barn begun?

A. On April the 14th.

Q. 8. Was it finished before harvest?

A. No, sir.

Q. 9. What was the last work done on it before harvest?

A. I cannot exactly remember.

Q. 10. When was the last work done before harvest?

A. On the 12th of June of that same year.

Q. 11. Did Mr. Evans put the crops of the farm into that barn that year?

A. Yes, sir.

Q. 12. Before, or after it was finished?

A. Before it was finished.

Q. 13. When did you resume work upon it, and when was it finished?

A. We resumed work to finish it on the 9th of August, that same year. It was finished I cannot exactly tell when, but it was finished before the 8th of November, of that same year, except the laying of the barn-floor tight, which was done in the following year.

Q. 14. Are all your charges against Mr. Underwood, between August 9th and November 8th, 1875, for work done on that barn?

A. No, sir.

Q. 15. For what else?

A. Putting up a wagon-shed with corn-cribs to it, a wood-house, and horse-power shed, which is attached to the barn.

Q. 16. Do you know of a cistern being put in there by Mr. Underwood? If so, when?

A. I do; but don't know the date.

Q. 17. Do you know the year?

A. I do not remember.

Q. 18. What kind of a barn stood on Mr. Underwood's place before the erection of the one about which you have been testifying?

A. An old barn.

Q. 19. What became of the old barn?

A. We tore it down to make room for the new one.

Q. 20. Is the new one still standing?

A. It was on last Tuesday morning.

Q. 21. Do you know of the erection of any other barn upon that farm during the last twenty years?

A. No, sir.

Q. 22. With regard to the size appearance, and cost of the new barn, would you say that it was a large, handsome, and expensive barn, or not?

A. I call it a large well-finished barn.

Q. 23. What did it cost?

A. As near as I can tell, such a barn would cost between three and four thousand dollars.

Q. 24. Was it painted?

A. Yes, sir.

Q. 25. What kind of a roof was put upon it?

A. A slate roof.

Q. 26. From your book entries you appear to have employed a number of hands about your work for Mr. Underwood, both before and after harvest. By whom were they boarded?

A. By Moses Evans.

Cross-examined by Mr. Storrow:

Cross-Q. 27. In the accounts which you have produced, you seem to have charged each week the labor of yourself and your several workmen by name, giving the name of each and the number of days he worked; is not that the fact?

A. Yes, sir.

Cross-Q. 28. Is the name of Andrew Evans or of Moses Evans anywhere in those accounts against Mr. Underwood?

A. No, sir.

Cross-Q. 29. Are there any entries in your book about Andrew Evans or Moses Evans?

A. There are entries in my book about Moses Evans, but not of working at the barn. There are none about Andrew that I know of.

Cross-Q. 30. Are there any entries about boarding the men at Moses Evans'?

A. No, sir.

Cross-Q. 31. When did you next do any work for Aleck Underwood?

A. I think the next year. The book shows, on page 139, the last item of work "Nov. 8, 1875." That is the last charge for work on building the barn and outbuildings. Page 145 shows eight days' work in June, 1876, being for tightening the new barn-floor; June, 1877, five and a half

days' work; that was on the farm, but I don't remember what it was for. In January, 1878, I did five days' work; I don't know exactly what that was, but it was on that farm. Page 176, October and November, 1879, shows work amounting to $71.25; that was putting up a building on that farm intended to store implements and keep sheep in.

Re-direct by Mr. Jacobs:

Q. Q. 32. I understand that your book entries, during the year 1875, relate exclusively to carpenter work which you and the hands employed by you did about the erection of the barn and other buildings for Mr. Underwood; is that correct?

A. Yes, sir.

Q. Q. 33. Can you, then, say whether or not Moses Evans or Andrew Evans did any work about the erection of those buildings?

A. I saw them hauling timber for the barn.

Q. Q. 34. Did you know whether they did any other work or not about the erection of those buildings?

A. I don't remember.

Q. Q. 35. Whilst you were working at Mr. Underwood's farm, in 1875, with whom did you board?

A. With Mr. Evans.

Examination taken, reduced to writing, and by the witness affirmed and subscribed to before me, this 25th day of October, 1883.

FRED. M. OTT,
Examiner.

HENRY KLUGH.

MARGARET JANE ERB, *being produced, affirmed and examined, saith:*

Examined by Mr. Hill:

My age is 22; residence, about two miles from Hoagstown, Cumberland county, Pa.

Q. 1. What is your husband's name?

A. Emory Ellsworth Erb.

Q. 2. When were you married?

A. The 29th day of March, 1883.

Q. 3. What is your father's name?

A. Moses Evans.

Q. 4. Then you are a sister to Jacob Evans and Andrew Evans, who have testified in this case, are you?

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A. Yes, sir.

Q. 5. Your brother Andrew testified that he, with your sister Sarah and you, once made a visit together to your brother Jacob at Milltown; do you remember that visit?

A. Yes, sir.

Q. 6. Can you state in what year that visit was made?

A. In 1875.

Q. 7. In what time of the year?

A. In the fall.

Q. 8. What farm was your father then living on?

A. On Mr. Underwood's.

Q. 9. Do you remember when he moved on to Mr. Underwood's farm —what year it was?

A. In the spring of 1875.

Q. 10. Do you remember anything that was going on of importance on that farm that summer and fall of 1875?

A. He built the barn.

Q. 11. Were you living at your father's home that summer and fall?

A. Yes, sir; I was.

Q. 12. Do you remember who boarded the hands who worked on the barn that year?

A. My father.

Q. 13. When you and Andrew and Sarah went down to Milltown to visit your brother Jacob, what sort of conveyance did you go by?

A. In a buggy.

Q. 14. Whose horse and buggy did you have?

A. Andrew's.

Q. 15. Do you remember where Andrew was keeping his horse and buggy at that time?

A. I think at Ambrose Knaub's; I ain't right certain.

Q. 16. Do you remember where Andrew was living and working at that time?

A. At Ambrose Knaub's.

Q. 17. Tell us whether or not you ever visited your brother Jacob's family with your brother Andrew and your sister Sarah, at any other time except that once; and if so, at what other time?

A. I didn't with Andrew, but I did with Sarah; it was in September, but I don't remember what year.

Q. 18. Then, if I understand you aright, you never visited Jacob with

Andrew and Sarah together, except at that one time, which was in the fal of 1875; am I correct?

A. Yes, sir.

Q. 19. You have a sister Elmira, have you not?

A Yes, sir.

Q. 20. In the family you call her Ella, don't you?

A. Yes, sir.

Q. 21. Did you ever visit your brother Jacob in company with your sister Ella? If so, when?

A. In March, 1879.

Q. 22. Were those three visits, to wit: first, the visit which you and Andrew and Sarah made together; secondly, the visit which you and Sarah made; and, thirdly, the visit which you and Ella made, the only visits which you ever made to your brother Jacob at Milltown, or not?

A. Yes, sir; they were.

Q. 23. On any of those visits, did you go to Mr. Daniel Drawbaugh's shop? If so, on which visit or visits?

A. The time Andrew and Sarah and I were down.

Q. 24. State whether or not you were ever in Mr. Drawbaugh's shop at any other time except that one.

A. No, sir; I wasn't.

Q. 25. Do you remember what day of the week it was when you and Sarah and Andrew went down from home on that visit?

A. On Saturday.

Q. 26. How long did you stay, and when did you return to your father's home?

A. We stayed until Sunday afternoon and then returned.

Q. 27. Was it on Saturday or on Sunday that you went down to Mr. Drawbaugh's shop during that visit?

A. On Sunday forenoon.

Q. 28. Did anybody go down to Mr. Drawbaugh's shop at that time with you? If so, who?

A. Jacob and his wife, and my brother Andrew and my sister Sarah.

Q. 29. How did you get into the shop?

A. We went up a pair of stairs outside.

Q. 30. About how high were the stairs—did they run up one story, or how?

A. I think they did; I don't rightly remember.

Q. 31. Who let you into the shop?

A. Mr. Drawbaugh.

Q. 32. While you were in the shop at that time, did Mr. Drawbaugh show you any machines or machinery or not?

[*Objected to as not in rebuttal.*]

A. Yes, sir.

Q. 33. What kind of machines were they—what were they for?

[*Same objection.*]

A. Talking-machines.

Q. 34. Do you remember whether he said anything during that visit about the machines, and if so, what?

[*Objected to as above, and as calling for incompetent testimony.*]

A. I remember of him saying that he could talk across the ocean.

Q. 35. Will you look at the machines now shown you marked "A," "B," "C," "D," "E," "F," and "I," and see whether you remember seeing any of them at that time, and if so, which ones?

[*Same objections.*]

A. I think I saw one of these small ones, ("*D*" and "*E*"); I don't remember rightly which one, but I think it was this one [*taking up "E" in her hand.*]

Q. 36. Have you any recollection whether or not any one talked through the talking-machines, or listened at them during that visit?

A. I don't remember.

Q. 37. Did you all five—I mean you, your brother Jacob and his wife, Andrew and Sarah—go down to Mr. Drawbaugh's shop together, and remain there, and go back from the shop together?

[*Same objections.*]

A. Yes, sir; we did.

Q. 38. Have you any idea how long you were in the shop together, that time when you were in the shop together?

[*Same objections.*]

A. No, sir; I don't remember the time.

Q. 39. Can you tell me what kind of a house Jacob was living in that time in 1875 when you visited Mr. Drawbaugh's shop?

[*Same objections.*]

A. A white plastered house.

Q. 40. What house was he living in when you afterwards visited him with Sarah, and when you afterwards visited him with Ella?

[*Same objections.*]

A. When I visited him with Sarah he was living in the mill-house, and when with Ella I don't remember what house he was living in.

Q. 41. At the time when you visited him with Andrew and Sarah together, was he living in a house down by the mill or up alongside of the hill, or where?

[*Objected to as above and as leading.*]

A. Up alongside of the hill.

Q. 42. Do you know whether that house is still standing or not?

[*Same objections.*]

A. No, sir; it ain't.

Q. 43. Do you remember when you learned that it had been torn down?

[*Same objections.*]

A. The time Ella and I were down.

Q. 44. How long was the visit which you and Ella made to Milltown together?

[*Same objections.*]

A. From Saturday till Monday.

Q. 45. And how long was the visit which you and Sarah made to Milltown at the time Andrew was not along?

[*Same objections.*]

A. From Saturday till Monday.

Q. 46. Do you remember whether or not, when you got home from your visit in the fall of 1875, you told your folks about seeing Mr. Drawbaugh's talking-machines, and about his saying that he could talk across the ocean?

[*Same objections.*]

A. Yes, sir; I did.

Q. 47. If I understand you correctly, you say that you have never been in Mr. Drawbaugh's shop since that visit in the fall of 1875; am I right?

[*Same objections.*]

A. Yes, sir.

Cross-examined by Mr. Storrow:

Cross-Q. 48. What else did you see at Mr. Drawbaugh's shop besides

A. Mr. Drawbaugh.

Q. 32. While you were in the shop at that time, did Mr. Drawbaugh show you any machines or machinery or not?

[*Objected to as not in rebuttal.*]

A. Yes, sir.

Q. 33. What kind of machines were they—what were they for?

[*Same objection.*]

A. Talking-machines.

Q. 34. Do you remember whether he said anything during that visit about the machines, and if so, what?

[*Objected to as above, and as calling for incompetent testimony.*]

A. I remember of him saying that he could talk across the ocean.

Q. 35. Will you look at the machines now shown you marked "A," "B," "C," "D," "E," "F," and "I," and see whether you remember seeing any of them at that time, and if so, which ones?

[*Same objections.*]

A. I think I saw one of these small ones, ("*D*" and "*E*"); I don't remember rightly which one, but I think it was this one [*taking up "E" in her hand.*]

Q. 36. Have you any recollection whether or not any one talked through the talking-machines, or listened at them during that visit?

A. I don't remember.

Q. 37. Did you all five—I mean you, your brother Jacob and his wife, Andrew and Sarah—go down to Mr. Drawbaugh's shop together, and remain there, and go back from the shop together?

[*Same objections.*]

A. Yes, sir; we did.

Q. 38. Have you any idea how long you were in the shop together, that time when you were in the shop together?

[*Same objections.*]

A. No, sir; I don't remember the time.

Q. 39. Can you tell me what kind of a house Jacob was living in that time in 1875 when you visited Mr. Drawbaugh's shop?

[*Same objections.*]

A. A white plastered house.

Q. 40. What house was he living in when you afterwards visited him with Sarah, and when you afterwards visited him with Ella?

[*Same objections.*]

A. When I visited him with Sarah he was living in the mill-house, and when with Ella I don't remember what house he was living in.

Q. 41. At the time when you visited him with Andrew and Sarah together, was he living in a house down by the mill or up alongside of the hill, or where?

[*Objected to as above and as leading.*]

A. Up alongside of the hill.

Q. 42. Do you know whether that house is still standing or not?

[*Same objections.*]

A. No, sir; it ain't.

Q. 43. Do you remember when you learned that it had been torn down?

[*Same objections.*]

A. The time Ella and I were down.

Q. 44. How long was the visit which you and Ella made to Milltown together?

[*Same objections.*]

A. From Saturday till Monday.

Q. 45. And how long was the visit which you and Sarah made to Milltown at the time Andrew was not along?

[*Same objections.*]

A. From Saturday till Monday.

Q. 46. Do you remember whether or not, when you got home from your visit in the fall of 1875, you told your folks about seeing Mr. Drawbaugh's talking-machines, and about his saying that he could talk across the ocean?

[*Same objections.*]

A. Yes, sir; I did.

Q. 47. If I understand you correctly, you say that you have never been in Mr. Drawbaugh's shop since that visit in the fall of 1875; am I right?

[*Same objections.*]

A. Yes, sir.

Cross-examined by Mr. Storrow:

Cross-Q. 48. What else did you see at Mr. Drawbaugh's shop besides

the instruments which you have specified among those now on the table?

A. I saw a couple of large clocks.

Cross-Q. 49. What part of the shop were they in?

A. I don't remember.

Cross-Q. 50. What else did you see there?

A. I don't remember of anything else.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 25th day of October, 1883.

FRED. M. OTT,
Examiner.

MARGARET JANE ERB.

Recess until 2 *P. M.*

2 *P. M.—Examination resumed.*

DAVID EVANS, *being duly produced, affirmed, and examined, saith:*

Examined by Mr. Jacobs:

My age is twenty-nine; residence, Dillsburg, York county, Pa.; occupation, laborer.

Q. 1. You are a son of Moses Evans, and a brother of Jacob and Andrew Evans and of Mrs. Margaret Jane Erb, are you not?

A. Yes, sir.

Q. 2. What other sisters have you?

A. Elmira Rentzel, and Sarah Evans, and Agnes Celesta Evans.

Q. 3. Do you remember when your father went to live upon Alexander Underwood's farm? If so, when did he?

A. Yes, sir; in the spring of 1875.

Q. 4. Do you know of the erection of a new barn upon that farm, and if so, was it before or after your father went to live upon the farm?

A. Yes, sir; it was the same year he moved on the farm.

Q. 5. Who did the carpenter-work upon it, and who boarded the hands employed in building it?

A. Henry Klugh did the carpenter work, and my father boarded the hands.

Q. 6. Your brother Andrew has testified that he worked for and lived with Ambrose Knaub, upon Hurst's farm, adjoining Underwood's; do you remember that fact?

A. Yes, sir.

Q. 7. Can you tell when it was?

A. Yes, sir; in November, 1875.

Q. 8. How do you know it was in November?

A. Because we had just finished husking corn about that time, and we generally finish in October.

Q. 9. Where were you living, and for whom were you working at that time?

A. I was living with my father, and working for him.

Q. 10. How do you fix 1875 as the year in which your brother Andrew lived with and worked for Ambrose Knaub?

A. That was the year I was twenty-one years of age.

Q. 11. Was it before, or after the erection of the barn that you have spoken of?

A. It was in the same year, only it was in the fall; the barn was built first.

Q. 12. State how long your brother Andrew lived with Mr. Knaub, if you remember.

A. About a month, as near as I can recollect.

Q. 13. Do you know where he lived after he left Knaub's?

A. He went to Andy Spahr's.

Q. 14. Do you remember of your brother Andrew having a horse and buggy at the time he lived at Knaub's, and if so, where did he keep them?

A. Yes, sir; he kept it at Knaub's.

Q. 15. Do you remember of the visit which your brother Andrew and any of your sisters made about that time, and if so, where did they go, and which of your sisters went with him?

A. Yes, sir; they went to Milltown to my brother Jake—Andrew, and Mrs. Erb, and my sister Sarah.

Q. 16. Where was Andrew living at the time of that visit?

A. At Ambrose Knaub's.

Q. 17. Do you remember on what day of the week it was that they started?

A. Yes, sir; it was Saturday.

Q. 18. On what day did they return?

A. On Sunday.

Q. 19. Did you see and talk with any of them on the day of their return; and if so, with which of them?

[*Objected to by Mr. Smith as not competent and not in rebuttal.*]

A. Yes, sir; I seen my two sisters and talked with them.

Q. 20. Did they or not tell you of any particular place of interest which they had visited while at Milltown?

[*Same objection, and objected to as leading.*]

A. Yes, sir; they said they visited Drawbaugh's shop.

Q. 21. Did they or not tell you what they had seen there; if so, what did they say they had seen?

[*Objected to by Mr. Storrow as incompetent and not in rebuttal.*]

A. Yes, sir; I remember they said they had seen a talking-machine, an electric clock, and a carpet-rag looper. That is all I can remember.

Q. 22. Did they or not tell you anything Mr. Drawbaugh had said about his talking-machine?

[*Same objections.*]

A. Yes, sir; they said that he said, if he had his wires to it, he could talk across the ocean into Europe.

Q. 23. At what time did he tell you this?

[*Same objections.*]

A. On Sunday evening when they came home.

Cross-examination, de bene esse, by Mr. Storrow:

Cross-Q. 24. Where did you work in the fall of 1875?

A. For my father at home, on Underwood's farm.

Cross-Q. 25. Where did you work in 1876?

A. I worked for my father till after harvest, and then I went to the blacksmith's trade with Alf. Hare, at Clear Spring, York county, about five miles from where my father lived then.

Cross-Q. 26. Where did you work in 1877?

A. I worked for Alf. Hare from the time when I went in 1876 until the spring of 1878.

Cross-Q. 27. Where did you go to work then?

A. For my father.

Cross-Q. 28. What did you do for your father?

A. I worked on the farm.

Cross-Q. 29. How long did you stay with your father?

A. Till December.

Cross-Q. 30. Where did you move to then?

A. I went to Aleck Underwood's, and worked on the farm for him till the 1st of January, 1880—1881 it was.

Cross-Q. 31. What farm was that, and what work did you do on it?

A. It was the farm that the barn was built on; I did general farm work.

Cross-Q. 32. Now, please tell me again what your sisters said about the talking-machine.

A. That Drawbaugh said if he had his wires to it across, he could talk across the ocean—if he had his wires across.

Cross-Q. 33. Tell me what they said about the electric clock.

A. They said he had an electric clock there that didn't need no winding; it run without winding.

Cross-Q. 34. What did they say about the loopers?

A. They didn't describe it at all that I can remember—just told me that he had a looper.

Cross-Q. 35. Did they mention anything else?

A. No, sir.

Examination taken, reduced to writing, and by the witness affirmed and subscribed to before me, this 25th day of October, 1883.

FRED. M. OTT,
Examiner.

DAVID EVANS.

SARAH ELIZABETH EVANS, *being produced, affirmed and examined, saith:*

Examined by Mr. Hill:

My age is twenty-four; residence, in Franklin township, York county, near Franklintown.

Q. 1. What is your father's name?

A. Moses Evans.

Q. 2. Do you live in his family?

A. Yes, sir.

Q. 3. Did you live in his family when he lived on the Aleck Underwood farm near Dillsburg?

A. Yes, sir; I did.

Q. 4. Do you remember what year it was that he moved on to that Underwood farm?

A. 1875.

Q. 5. In the spring?

A. Yes, sir.

Q. 6. Do you remember anything that was done on that Underwood farm during that summer and fall of 1875?

A. Mr. Underwood built his barn.

Q. 7. Who boarded the hands that worked on his barn?

A. Moses Evans.

Q. 8 You know of your brother Jacob's living at Milltown, in Cumberland county, I suppose, do you not?

A. Yes, sir; I do.

Q. 9. Did you ever visit him while he lived there?

A. Yes, sir; in the year 1875.

Q. 10. In what part of 1875?

A. In the latter part of November.

Q. 11. How did you get down from Dillsburg to Milltown and back on that occasion?

A. My brother brought me down and took me back with his horse and buggy; we came down on Saturday and went back on Sunday.

Q. 12. Which brother?

A. Andrew.

Q. 13. Did anybody else go on that visit besides you and Andrew? If so, who?

A. Yes, sir; my sister Jane, now Mrs. Erb.

Q. 14. Do you remember where your brother Andrew was working at the time of that visit?

A. At Ambrose Knaub's.

Q. 15. Do you remember how long he worked at Ambrose Knaub's?

A. I can't just say how long he worked there.

Q. 16. Can you tell us whether he ever worked at Ambrose Knaub's at any other time except that fall or not?

A. No; but I don't think he did.

Q. 17. Do you remember where he kept his horse and buggy the fall while he worked at Mr. Knaub's?

A. He kept it at Mr. Knaub's.

Q. 18. Did you ever visit your brother Jacob at Milltown at any other time after that? If so, how many times?

A. Yes; in 1878 and 1880.

Q. 19. About what time in 1878?

A. In September sometime.

Q. 20. Did anybody visit there with you in September, 1878? If so, who?

A. My sister Jane.

Q. 21. How do you fix 1878 as the year of that last-named visit?

A. It was the first year we lived at the place where we live now.

Q. 22. How many years did you live on the Underwood place?

A. Three years.

Q. 23. When you visited your brother Jacob, in 1880, did anybody visit him with you? If so, who?

A. No, sir; I was there by myself.

Q. 24. Are those three visits all the visits you ever made to your brother Jacob while he lived at Milltown?

A. Yes, sir.

Q. 25. On any of those visits did you go into Mr. Daniel Drawbaugh's shop? If so, on which one?

A. Yes, sir; in 1875.

Q. 26. Who went into Mr. Drawbaugh's shop with you at that time, if anybody?

A. My brother Jacob and his wife, my brother Andrew, and my sister Jane.

Q. 27. What did you see there at Mr. Drawbaugh's shop at that time?

[*Objected to by Mr. Smith as incompetent and not in rebuttal.*]

A. Telephones.

Q. 28. Please look at the instruments "A," "B," "C," "D," "E," "F," and "I," now shown you, and state whether you remember seeing any of them at that time, or not; and point out any that you remember, if there are any.

[*Same objections.*]

A. This here one ["A"] I am sure I seen, and this here one ["D"]. I think I saw the other ones, but I am not positive. I saw a number of machines there, but I couldn't remember them all.

Q. 29. Do you remember of Mr. Drawbaugh's saying anything about how far he could talk with the machines, during that visit which you made to his shop?

[*Same objection.*]

A. Yes, sir; he said he could talk across the ocean, if he could get his wires fixed across the ocean.

Q. 30. Have you any recollection as to whether anybody talked

through the machines or listened at them while your party were there at the shop?

[*Same objection.*]

A. I think Mr. Drawbaugh did, but I ain't quite sure; my brother Jacob listened.

Q. 31. Will you tell us whether or not you were ever at Mr. Drawbaugh's shop at any other time except during that visit in the fall of 1875?

[*Same objection.*]

A. No, sir; I was not.

Q. 32. Was that the first, last, and only time that you were ever in his shop?

[*Same objection.*]

A. Yes, sir; it was.

Q. 33. When you got back home to your father's house that Sunday night, in the fall of 1875, do you remember whether you told the folks there what you had seen at Mr. Drawbaugh's shop?

[*Same objection.*]

A. Yes, sir; I did.

Cross-examined by Mr. Smith, de bene esse:

Cross-Q. 34. How long did you stay at Drawbaugh's shop?

A. I think it was between nine and ten o'clock, or along there, when we went up, and I think it was going towards twelve when we came home.

Cross-Q. 35. You said that you saw telephones there; did Mr. Drawbaugh call them telephones?

A. Yes, sir; he did.

Cross-Q. 36. Had you ever seen any telephones before that or heard about them?

A. No, sir.

Cross-Q. 37. How long did you look at them?

A. That I can't say; there were a number of other machines there that we were looking at—clocks and——

Cross-Q. 38. Did Mr. Drawbaugh say anything else about the telephones except what you have said?

A. Not that I remember.

Cross-Q. 39. Were the telephones lying on the table when you went in, or where were they?

A. I am not certain about that.

Cross-Q. 40. You said your brother Jacob listened at one of them. Which one did he listen at?

A. I don't know which one.

Cross-Q. 41. Did he put it up to his ear, or put his ear down to it?

A. I can't say positively which he did any more.

Cross-Q. 42. How long did he listen at it?

A. That I can't tell; I walked out into the other room then.

Cross-Q. 43. Do you mean that you walked out while he was listening?

A. Yes, sir.

Cross-Q. 44. Where did you go then, and who went with you?

A. My sister Jane and I just walked out into the other room and stayed there until the others came.

Cross-Q. 45. Where was Mr. Drawbaugh when you walked out?

A. He was in a little room where he had the telephone in. It was at the right-hand side of the shop as you came in.

Cross-Q. 46. Was that the room where the others were, and where you were when you first saw the telephones?

A. Yes, sir.

Cross-Q. 47. Was the room that you went into the room in the left-hand corner?

A. It was on the right-hand side as you came into the big room.

Cross-Q. 48. I understood you to say that the telephones were in the room at the right-hand corner as you came in. Was that the way you meant to be understood?

A. Yes, sir.

Cross-Q. 49. Do you mean as you came into the room from out-doors?

A. Yes, sir.

Cross-Q. 50. You went up some stairs outside to get to the room, didn't you?

A. Yes, sir.

Cross-Q. 51. And when you went from that room where the telephones were, and which you went into as you went into the building, which way from that room was the room which you and your sister went into?

A. I think it was on the left-hand side.

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Cross-Q. 52. Did Mr. Drawbaugh come into that room with the others after you went into it?

A. I think he did, but I can't say positively.

Cross-Q. 53. What did you see in that other room—the room on the left-hand side?

A. I think that is the room the clocks were in, but I can't say for sure any more.

Cross-Q. 54. What kind of clocks were they?

A. He had one big electric clock there.

Cross-Q. 55. Did he have any other kind?

A. Indeed I can't say for sure.

Cross-Q. 56. Did he explain anything about the clocks?

A. Yes, sir; he explained some.

Cross-Q. 57. Do you remember what he said?

A. No, sir; I don't remember what he said about them.

Cross-Q. 58. What else did you see while you were there?

A. That was all, I believe.

Cross-Q. 59. Was Mr. Drawbaugh with you all the time that you were there?

A. Yes, sir; he was taking us around to see these—

Cross-Q. 60. Did he say anything about his telephones—how they worked, or what he was doing with them?

A. He was explaining everything to us, but I don't remember what he said any more.

Cross-Q. 61. Then he showed you, I suppose, other things besides the telephones and clocks, but you don't remember what they were.

A. No, sir; I don't remember seeing anything but telephones and clocks.

Cross-Q. 62. And you don't remember anything else that he said about the telephones and clocks except what you have stated, do you?

A. No, sir.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 25th day of October, 1883.

FRED. M. OTT,
Examiner.

SARAH ELIZABETH EVANS.

MARY A. EVANS, *being produced, affirmed, and examined, saith:*

Examined by Mr. Hill:

My age is 29; I live at Eichinger's mill, Fairview township, York county; my post-office address is Yocumtown.

Q. 1. Are you the wife of Mr. Jacob B. Evans, who testified last winter on behalf of the Bell Telephone Company in this suit?

A. Yes, sir.

Q. 2. What was your father's name?

A. Abraham Ditlow.

Q. 3. Are you a sister of Abraham and Joseph Ditlow, who testified last winter on behalf of the Bell Telephone Company in this suit?

A. Yes, sir.

Q. 4. When did your father die?

A. On the 21st of February, 1873.

Q. 5. Did you reside in his family until the time of his death?

A. No, sir.

Q. 6. What time did you reside in your father's family?

A. I had been there all the time till just two weeks before he died.

Q. 7. I understand, from your husband's testimony, that you were married in September, 1874; does that agree with your recollection?

A. Yes, sir.

Q. 8. Can you give the date in September when you were married?

A. Yes, sir; on the 12th.

Q. 9. When and where did you go to housekeeping first after you were married?

A. In the spring of 1875, at Etter & Shanklin's mill.

Q. 10. Did you and your husband live at your mother's place until that time after you were married?

A. From the beginning of December until that time; I was there all the time, but he came there the beginning of December.

Q. 11. Do you remember when you moved to Milltown?

A. Yes, sir; in the fall of 1875.

Q. 12. What house in Milltown did you move into when you first moved there from Etter & Shanklin's mill?

A. A rough-plastered house on the right-hand side as you go up the hill.

Q. 13. Was that house on the place where Mr. Clendennin's house or store now stands?

A. Yes, sir.

Q. 14. Then the house that you lived in has been torn down, I suppose, has it?

A. Yes, sir.

Q. 15. Did that house stand nearly opposite the blacksmith shop, with the road running between?

A. Yes, sir.

Q. 16. How long did you continue to live in that house?

A. From the fall of 1875 to the spring of 1876—the 2d of April.

Q. 17. You lived in that house, then, about six months, I should judge; is that the fact?

A. Yes, sir.

Q. 18. Have you ever lived in that house since the second of April, 1876?

A. No, sir.

Q. 19. Your brother-in-law, Andrew Evans, and his two sisters, Jane and Sarah, have testified that they once made you and your husband a visit together; do you remember that visit?

[*Objected to as not in rebuttal.*]

A. Yes, sir.

Q. 20. State whether or not they ever visited you more than once—the three together.

[*Same objection.*]

A. No, sir.

Q. 21. What house were you living in when they made you that visit?

A. In the house we moved in in 1875.

Q. 22. The house that stood where Clendennin's store now stands?

[*Same objection.*]

A. Yes, sir.

Q. 23. What time of the year was it when they made you that visit at that house?

[*Same objection.*]

A. Some time between October and December; I don't remember the date, though.

Q. 24. Do you recollect of Sarah and Andrew and Jane being at that house, and coming to that house at the time of that visit?

[*Same objection.*]

A. Yes, sir.

Q. 25. Do you remember what day of the week it was when they came on that visit, and how long they stayed?

[*Same objection.*]

A. Yes, sir; they came on Saturday evening and stayed till Sunday afternoon.

Q. 26. Do you remember anything that was done on that Sunday during that visit which Andrew and Sarah and Jane made to you in the fall of 1875?

[*Same objection.*]

A. Yes, sir.

Q. 27. What?

[*Same objection.*]

A. We took a walk to the machine shop.

Q. 28. Mr. Daniel Drawbaugh's shop?

[*Same objection.*]

A. He worked there, any way; I don't know whether it was his or not.

Q. 29. Who went down with you that Sunday to Mr. Daniel Drawbaugh's shop?

[*Same objection.*]

A. My husband, my brother-in-law Andrew Evans, and his two sisters, Jane and Sarah.

Q. 30. Did you see anything in Mr. Drawbaugh's shop at that time? If so, what?

[*Same objection.*]

A. Yes, sir; we seen the telephones, the clocks, and the telegraph, and different other things.

Q. 31. Will you please look at the telephone instruments now on the table before you, marked "A," "B," "C," "D," "E," "F," and "I," and tell us whether you remember seeing any of these instruments at Mr. Drawbaugh's shop at that time; and if so, which ones?

[*Same objection.*]

A. I remember seeing these three at that time, [*indicating "A," "D," and "B;"*] I have seen them all, of course, but I don't remember

the others at that time; I remember well seeing these three at that time.

Q. 32. Do you remember whether any person talked through the telephones, or listened at them, while you were there at the shop in the fall of 1875 with your husband and Andrew, and his two sisters?

[*Same objection.*]

A. Yes, sir.

Q. 33. Do you remember who did the talking and listening through the telephones at that time?

[*Same objection.*]

A. Yes, sir; my husband and Mr. Drawbaugh talked through the telephone, and my husband listened.

Q. 34. Was that the first time that you had ever seen Mr. Drawbaugh's telephones yourself?

[*Same objection.*]

A. Yes, sir.

Adjourned until October 26, 1883, at ten A. M.

OCTOBER 26, 1883.

Resumed pursuant to adjournment.

Present, same counsel.

Q. 35. In going into Mr. Drawbaugh's shop at that time when your husband, Andrew, Jane, and Sarah were with you, do you remember whether you went up a flight of steps or a stairway outside of the building or not?

A. Yes, sir; we did.

Q. 36. Then as you went into the building through the outside door at the top of the stair-case, what sort of a room did you first go into, if you remember?

A. A small room.

Q. 37. Was it at the right hand or left hand, or straight ahead, as you entered the building?

A. On the right hand.

Q. 38. Do you remember whether there was a small room at the left hand or not?

A. Yes, sir; there was.

Q. 39. In which room did your husband listen at the telephones?

A. In the small room at the right-hand side.

Q. 40. Do you remember where Mr. Drawbaugh was when he was talking through the telephones and your husband listening?

A. Yes, sir; he was in the small room on the left-hand side.

Q. 41. Do you remember whether or not you could overhear Mr. Drawbaugh talking when he was in the small room at the left-hand side with the telephones, and you were in the small room on the right-hand side?

[*Same objection.*]

A. No, sir; I can't remember.

Q. 42. Did you go into the small room at the left hand where Mr. Drawbaugh did the talking?

[*Same objection.*]

A. No, sir.

Q. 43. Did you go in while you were there in the shop and while Mr. Drawbaugh was not talking at that time?

[*Same objection.*]

A. Yes, sir.

Q. 44. Do you remember whether Mr. Drawbaugh, while you were there in the shop on that visit in the fall of 1875, said anything about how far he could talk from one place to another with his telephones?

[*Same objection.*]

A. Yes, sir.

Q. 45. Tell us what he said about it, so far as you remember.

[*Same objection.*]

A. He said that if he could get the wires fixed across the ocean he could talk clear to Europe. He told us how many miles he could, but I have forgotten that; it was a great way, though; he was certain of that—so many miles as he told us.

Q. 46. And then after telling you the number of miles that he was certain he could talk through it, he added that if he could get his wires fixed across the ocean he thought he could talk across the ocean to Europe; is that your meaning?

[*Objected to as above and as leading.*]

A. Yes, sir.

Q. 47. Your husband, Mr. Jacob Evans, testified last winter, at Philadelphia, as a witness for the Bell Telephone Company, in this suit; in

his testimony he stated in substance that he did not remember seeing Mr. Drawbaugh's telephones, or knowing anything about them until some time in the year 1877; when he returned from Philadelphia last winter did he tell you what he had testified to?

[*Same objection.*]

A. Yes, sir.

Q. 48. Do you remember what you said to him on the subject when he told you what he had testified?

[*Objected to as incompetent and not in rebuttal.*]

A. Yes, sir; I told him I thought it was impossible that he couldn't remember.

Q. 49. Did you call his attention to this visit which he made with Andrew, Jane, Sarah, and yourself to Mr. Drawbaugh's shop in 1875?

[*Same objection, and objected to as leading.*]

A. Yes, sir.

Q. 50. When his attention was called to it did he express any returning recollection of the fact himself?

[*Objected to as incompetent, as not in rebuttal, as leading, and as asking for the witness' opinion.*]

A. Yes, sir.

Q. 51. At the time when you had that conversation with your husband, and called his attention to the fact of that visit in 1875, tell us whether or not Mr. Daniel Drawbaugh, or anybody else on his side of the case, had approached you or said anything to you about your memory or knowedge of Mr. Drawbaugh's telephones or talking-machines?

[*Same objection.*]

A. No, sir; they did not.

Q. 52. Your brothers, Abraham Ditlow and Joseph Ditlow, testified last winter, in Philadelphia, on behalf of the Bell Telephone Company in this case, and said in substance that they did not at that time remember of having known of Mr. Drawbaugh's telephones before the spring of 1877; did you see them or either of them on their return from Philadelphia, immediately after they had testified?

[*Same objection.*]

A. Yes, sir.

Q. 53. Did you have any conversation with them about the testimony they had given in this case?

[*Objected to as incompetent.*]

A. We talked some about it.

Q. 54. Do you remember the substance of anything you said to them about it at that time?

[*Objected to as incompetent and not in rebuttal.*]

A. Yes, sir.

Q. 55. State what it was, as fully as you remember.

[*Same objection, and further objected to as calling for the witness' guess-work and not for her memory.*]

A. I remember saying to my brother Abe that I thought he had a stronger mind, and could remember better than he did.

Q. 56. Was that before or after you had the conversation with your husband on his return from Philadelphia?

[*Same objection.*]

A. It was before.

Q. 57. Do you remember whether or not you ever heard Mr. Drawbaugh's telephones or talking-machines spoken of prior to your visit to his shop with your husband, Andrew, Jane, and Sarah in the fall of 1875?

[*Same objection.*]

A. Yes, sir.

Q. 58. How long ago did you first hear them spoken of, so far as you can recollect?

[*Same objection.*]

A. In 1872.

Q. 59. That was some time prior to your father's death, was it not?

[*Same objection.*]

A. Yes, sir; before that.

Q. 60. Did you ever know them to be spoken of in the presence of your father while he was still living, or not?

[*Same objection.*]

A. Yes, sir.

Q. 61. Do you remember your father's saying anything about it when they were spoken of in his presence? If so, what did he say?

[*Same objection.*]

A. Yes, sir; he said he didn't believe that there could be such a thing made. There were a few other things that he said, too. He said he thought the world wouldn't stand long if there was such a thing made.

Q. 62. Have you any idea how long it was before your father's death that he made those remarks?

[*Same objection.*]

A. In the latter part of 1872; it was before he was confined to his bed—two or three months before his death.

Q. 63. Where was the conversation in which your father made those remarks, and who was present, so far as you remember?

[*Same objection.*]

A. It was at home; my father and mother, my brother Abraham, my brother Samuel—I think my brother Emanuel was there, too, but I ain't sure—and myself were present.

Q. 64. Your home, then, was in your father's family, was it?

[*Same objection.*]

A. Yes, sir.

Q. 65. You were married September 12th, 1874, I believe; do you remember having any occasion to visit Mr. Drawbaugh's shop about the time of your marriage, or near that time?

[*Same objection.*]

A. Some time afterwards; yes, sir.

Q. 66. How happened you to go there then?

[*Same objection.*]

A. Mr. George Drawbaugh was making a sideboard, and I went down to see it.

Q. 67. Was that the same fall in which you were married or not?

[*Same objection.*]

A. Yes, sir; it was.

Q. 68. Do you remember why it was that Mr. George Drawbaugh was selected as the man to make that sideboard?

[*Same objection.*]

A. Yes, sir.

Q. 69. Please state how it happened.

[*Same objection.*]

A. He owed my brother Abe, and he thought that was the way he could get it.

Q. 70. Did your brother Abe get him to make the sideboard for you?

[*Same objection.*]

A. Yes, sir.

Q. 71. Did Mr. George Drawbaugh make the sideboard at the shop occupied by Mr. Daniel Drawbaugh?

[*Same objection.*]

A. Yes, sir.

Q. 72. Do you recollect whether or not that visit which you made to Mr. Drawbaugh's shop to look at a sideboard was the first time you had been in Mr. Drawbaugh's shop?

[*Same objection.*]

A. Yes, sir; it was.

Q. 73. Do you recollect of expecting or hoping to see anything in particular when you went down to Mr. Drawbaugh's shop to look at the sideboard; if so, what besides the sideboard?

[*Same objection.*]

A. I can't remember.

Q. 74. Do you recollect whether or not you had Mr. Drawbaugh's telephones or talking-machines in your mind when you visited his shop to look at the sideboard?

[*Same objection.*]

A. I think most I had, but I can't remember right.

Q. 75. Did you see Mr. Daniel Drawbaugh in the shop at that time?

[*Same objection.*]

A. Yes, sir.

Q. 76. Did you have much conversation with him, or any, or was he pretty busy?

[*Objected to as above, and as leading.*]

A. No, sir; I did not; he was busy.

Q. 77. Referring to the house which you and your husband first moved into at Milltown in the fall of 1875—was that a very old house, or not?

[*Same objection.*]

A. Yes, sir; it was.

Q. 78. State whether it was or was not reported to be one of the oldest houses in Milltown at that time.

[*Same objection.*]

A. Yes, sir.

[*Cross-examined by Mr Storrow, de benne esse.*]

Cross-Q. 79. Your husband testified that two years ago last summer he was summoned to come over to Harrisburg to testify on behalf of Mr. Drawbaugh in this suit; and that he came over but didn't testify: you remember that fact, do you not?

A. Yes, sir.

Cross-Q. 80. Before he came over Mr. Drawbaugh had been at the mill to see your husband about talking-machines; do you remember that fact?

A. No, sir.

Cross-Q. 81. A year ago last June Mr. Storrow and Mr. Comfort were over at your place, and Mr. Storrow stayed in the mill with your husband, and Mr. Comfort went into the house and talked with you; you remember that occurrence I suppose?

A. Yes, sir.

Cross-Q. 82. Mr. Comfort talked with you about Drawbaugh's talking-machines at that time, didn't he?

A. Yes, sir.

Cross-Q. 83. And I suppose you told him truly what your recollection then was, didn't you?

A. We didn't talk much about it—myself; he just asked me about different other folks.

Cross-Q. 84. You did say something about talking-machines, didn't you?

A. Yes, sir; very little at that time.

Cross-Q. 85. Didn't you tell him truthfully what your recollection was at that time?

A. No, sir; the most that we were talking about at the time was about West. Smith; he asked me about him.

Cross-Q. 86. You also talked about Drawbaugh's talking-machines some, didn't you?

[*Objected to as a simple repetition of a question just answered, the witness having testified that she talked a little about it.*]

A. A little; yes sir.

Cross-Q. 87. And you told him that you had seen them once, or some of them, didn't you?

A. Yes, sir.

Cross-Q. 88. You knew after that visit that Mr. Storrow and Mr. Comfort expected your husband to be a witness for the Bell Company, did you not?

A. Yes, sir; not—not so very soon after; I didn't know anything about it at all till just before he went to the city of Philadelphia to testify; they just come there and took him right away—I made a mistake there.

Cross-Q. 89. Let me refresh your recollection a little: Don't you remember that that same summer, a month or two after Mr. Storrow and Mr. Comfort were at your place, it was expected that your husband would come to Harrisburg, or go to Baltimore, to testify?

A. He said that it might be that he would have to go to Baltimore. He—Mr. Comfort—told me at that time, that it might be that he—my husband—would have to go to Baltimore. He didn't say for sure, but that it might be.

Cross-Q. 90. Have to go to Baltimore to testify, I suppose you mean, do you not?

A. He did not say to me what for.

Cross-Q. 91. You understood that it was to go to testify, didn't you?

A. I thought so; yes, sir.

Cross-Q. 92. And the talk was that you might be wanted to go to Baltimore to testify as a witness for the Bell Company, at that time, also, wasn't it?

A. I don't remember.

Cross-Q. 93. There was talk at one time of your coming to testify as a witness for the Bell Company, either to Baltimore or Philadelphia, was there not?

A. Yes, sir; last winter.

Cross-Q. 94. And the reason for your not coming was, that either you or your child was sick, and you did not want to leave home, was it not?

[*Objected to as utterly immaterial and irrelevant.*]

A. Yes, sir; I wasn't well at the time.

Recess until 2 *P. M.*

Examination resumed at 2 *P. M.*]

Cross-Q. 95. When did you move away from Milltown?

A. In 1881, I think—three years ago this coming spring.

Cross-Q. 96. Have you ever been back there since?

A. Yes, sir.

Cross-Q. 97. How many times?

A. Four times, as near as I can remember.

Cross-Q. 98. When were they?

A. I went back on a visit in June of the same spring we moved to York county.

Cross-Q. 99. How long did you stay then, and whom did you visit?

A. I was there the best part of a week; I visited Mr. Gilbert's first, then Mr. Cosmus Clendennin's, Mr. Daniel Fettrow's, Mr. George Drawbaugh's, Mr. George May's, Mr. William Heck's, Daniel Drawbaugh's, John Simmons', and then I left Milltown and went to Camp Hill.

Cross-Q. 100. Whose house or houses did you stay at over night in Milltown?

A. I stayed two nights at Mr. Ezra Gilbert's, a night at Daniel Fettrow's, and two nights at John Simmons'.

Cross-Q. 101. When did you next go to Milltown?

A. My husband and I went up the next summer; we drove up on a Sunday morning, and came home the same evening.

Cross-Q. 102. Was that after harvest?

A. Yes, sir.

Cross-Q. 103. Whom did you visit that day?

A. Ez. Gilbert's and John Simmons'.

Cross-Q. 104. When did you next go to Milltown?

A. Last fall.

Cross-Q. 105. What time in the fall, and how long did you stay?

A. I think it was the 22d of November, or some time in the latter part of November, 1882; I stayed a week and a half.

Cross-Q. 106. Whom did you stay with and whom did you visit?

A. First when I left home I went to Shepherdstown to my brother Samuel; that was on Saturday or on Friday evening; I stayed until Monday, and then I came down to my uncle David Ditlow's, at Camp Hill; I visited a good many folks there. I couldn't tell you all, but I stayed two nights there. Then I went to Milltown to John Simmons'; I stayed two nights there. Then I visited Ez. Gilbert's, Clendennins', Daniel Fettrow's. I don't remember, but I think I was a little at Daniel Drawbaugh's at that time; then I went to Fred. Sheeley's; then I went to John Simmons' again, and from there I went to New Market.

Cross-Q. 107. When did you next go to Milltown?

A. Three weeks ago.

Cross-Q. 108. How long did you stay in Milltown at that visit, and at whose house did you stay?

A. I stayed there from Thursday morning until Saturday afternoon; I went to Ez. Gilbert's first and then went to George Drawbaugh's. Then I went to Cos. Clendennin's and stayed all night there Thursday night; then I went to Daniel Fettrow's; then I went to Daniel Drawbaugh's; then I went to Jake Collins'; then I went to Ez. Gilbert's and stayed there Friday night; then on Saturday morning I went to William Heck's; then I went back to Ez. Gilbert's and they took me to the train.

Cross-Q. 109. You were present yesterday while your sister-in-law, Sarah Elizabeth Evans, testified, were you not?

A. Yes, sir.

Cross-Q. 110. In your thirty-first answer, having looked on the instruments which were placed on the table in front of you yesterday, you said that you remembered seeing at that time three of them which you pointed out, and added: "I have seen them all, of course, but I don't remember the others at that time;" when did you see those others?

A. I think it was in 1878.

Cross-Q. 111. Which one of those instruments was the one your husband listened at, if you know?

A. I can't tell you that.

Cross-Q. 112. Which one did Mr. Drawbaugh speak into?

A. He was in the other room; I couldn't see that. He took things along in with him when he went in, but I couldn't see what he had.

Cross-Q. 113. How long was your husband listening?

A. That is more than I can tell—a few minutes, as near as I can remember.

Re-direct by Mr. Hill:

Q. Q. 114. Referring to the time when Mr. Storrow and Mr. Comfort were at your place together in York county, and Mr. Storrow staid in the mill, while Mr. Comfort went into the house and talked with you—state whether or not Mr. Comfort asked you about the time when you had seen Mr. Drawbaugh's telephones.

A. He did not ask me when I was there.

Q. Q. 115. State whether or not you gave him truthful answers to such questions as he asked you?

A. I did; so far as I could remember.

Q. Q. 116. Will you give us the conversation between yourself and Mr. Comfort at that time, as fully as you can now remember it? Tell us how it began, how it went on, and how it ended.

A. Yes, sir; I can't remember; we spoke a few words about how we were getting along, and whether we were all well, and then he asked me whether I had ever seen the talking-machines; I told him I did; then I don't remember that there was any more talk about the talking-machine. He asked me whether I remembered whether West. Smith was there after he left Milltown; I told him he was; he was there in 1877, and was there in 1880; he was there at our place just a week before Christmas. Comfort told me that West. Smith had told him that he had never been there after he had moved away. Then he told me that they thought that they would have Jake—my husband—fetched to Baltimore that summer; that is about all that passed between him and I at that time.

Re-cross by Mr. Storrow:

Re-Cross-Q. 117. At that same visit Mr. Comfort asked you where your brothers Joe and Abe lived, and you told him; is not that the fact?

A. I can't remember; it might be.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 26th day of October, 1883.

FRED. M. OTT,
Examiner.

MARY A. EVANS.

Adjourned until Oct. 27, 1883, at 10 A. M.

OCTOBER 26, 1883.

Examination resumed, pursuant to adjournment.

Present, same counsel.

JACOB HURST, *being produced, sworn, and examined, saith:*

Examined by Mr. Jacobs:

My age is fifty; residence, Mechanicsburg, Cumberland county, Pa.; occupation, dry goods merchant.

Q. 1 You are a son of Jacob B. Hurst, deceased, who formerly resided at Mechanicsburg, and who, during his life-time, owned a farm near Dillsburg, York county, Pa., on which Ambrose Knaub lived as tenant, are you not?

A. Yes, sir.

Q. 2. When did your father die, and when was he buried?

A. He died on November 18, and was buried on November 20, 1875.

Cross-examination waived by Mr. Storrow:

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 26th day of October, 1883.

FRED. M. OTT,
Examiner.

J. HURST.

ELIZABETH EVANS, *being produced, affirmed, and examined, saith:*

Examined by Mr. Jacobs:

My age is sixty; residence, three miles below Dillsburg and a mile west of Franklintown, York county, Pennsylvania.

Q. 1. You live with Moses Evans, do you not?

A. Yes, sir.

Q. 2. How are you related to him?

A. I was married to his brother.

Q. 3. Your husband is now dead, is he not?

A. Yes, sir.

Q. 4. How long have you lived with your brother-in-law, Moses Evans?

A. Seventeen years the 27th of next March.

Q. 5. Did you live with him upon Alexander Underwood's farm near Dillsburg?

A. Yes, sir.

Q. 6. Do you remember of the building of a barn on that farm whilst you lived there with your brother-in-law?

A. Yes, sir.

Q. 7. Do you remember of a visit which your nephew, Andrew Evans, and several of his sisters made to their brother Jacob at Milltown?

[*Objected to as not in rebuttal.*]

A. Yes, sir.

Q. 8. Which of his sisters went with him?

[*Same objection.*]

A. Sarah and Jane.

Q. 9. Where was Andrew living at that time?

[*Same objection.*]

A. At Ambrose Knaub's.

Q. 10. Do you remember on what day of the week they started away and on what day they returned?

[*Same objection.*]

A. They started away on Saturday afternoon about four o'clock, and returned on Sunday evening between seven and eight, as near as I can tell.

Q. 11. Can you tell whether that visit was made before or after the building of that barn?

[*Same objection.*]

A. After the building of the barn.

Q. 12. How long after?

[*Same objection.*]

A. As near as I can tell, it was about three months after the building of the barn—the same season.

Q. 13. After their return, did Andrew or either of his sisters tell you where they had been?

[*Same objection.*]

A. His two sisters told me that they were at Drawbaugh's shop.

Q. 14. Did they say who had taken them there?

[*Same objection.*]

A. Their brother Jake and his wife.

Q. 15. Did they tell you what they had seen there?

[*Same objection.*]

A. They told me they had seen great curiosities there; that they had seen a clock that they had never seen, and that they was talking about a talking-machine, and that he was showing them things there. They were telling me of this talking-machine that he had there.

Q. 16. Did they or not say that they had seen it?

[*Same objection.*]

A. They said they had seen it; that it was in another room, but he had shown it to them.

Q. 17. Did they or not say anything about any talking through it whilst they were there? If so, what did they say?

[*Same objection, and objected to as leading and incompetent.*]

A. They said that he said that he could talk away across the ocean with it—away into Europe—but when he went to talk he went into another room.

Q. 18. I understand from that that they told you that Mr. Drawbaugh went into another room to talk through his talking-machine whilst they were there; am I correct?

[*Same objection.*]

A. Yes, sir.

Q. 19. How long after their return did this conversation take place in which they told you about seeing Mr. Drawbaugh's talking-machines?

[*Same objection.*]

A. On Sunday evening and Monday.

Q. 20. Did they or not tell you who was present when they saw the talking-machines?

[*Same objection.*]

A. Yes, sir; their brother, Jake Evans, and his wife, and Emanuel Ditlow and Mr. Drawbaugh and the two girls.

Q. 21. How about Andrew?

[*Same objection.*]

A. Andrew was present; Sarah and Jane told me that they were all

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together in the shop—that is, Jake and his wife, Emanuel Ditlow, Andrew, and Mr. Drawbaugh, and the two girls.

[*Cross-examination waived by Mr. Storrow.*]

Examination taken, reduced to writing, and by the witness affirmed and subscribed to before me, this 27th day of October, 1883.

FRED. M. OTT,
Examiner.

Her
ELIZABETH × EVANS.
Mark.

MOSES EVANS, *being produced, affirmed, and examined, saith:*

Examined by Mr. Hill:

My age is sixty-two years; residence, Franklin township, York county, near the village of Franklintown; occupation, farmer.

Q. 1. Did you at one time rent the Aleck Underwood farm and live on it? If so, when did you rent said farm, and how long did you live upon it?

A. I rented it in the fall of 1874, moved on it in the spring of 1875, and lived on it three years in succession.

Q. 2. Did you occupy the farm under a written lease from Mr. Underwood, or only under a verbal lease?

A. Only under a verbal lease.

Q. 3. It has appeared in evidence here, that at one time a large and handsome barn was built on Mr. Underwood's place; can you state when that barn was built?

A. Yes; in the spring of 1875.

Q. 4. Do you remember whether the barn was finished in the spring of 1875, or whether it ran along through the summer and fall?

A. It was finished so far that we put the crop in; and then in the fall completed.

Q. 5. Then I take it for granted that you never used any other barn to put your crops in on that farm, except that new barn; am I correct?

A. No; no other one.

Q. 6. Did you board any of the hands while they were at work on that new barn that spring, summer, and fall?

A. Yes, sir; I boarded all the hands except the painters.

Q. 7. Did you keep a written memorandum of the meals that the hands took at your house while they were working on the barn?

A. Yes, sir.

Q. 8. Have you got it here?

A. Yes.

Q. 9. Will you produce it and allow us to copy some memoranda from it?

A. Yes, sir; here it is. (*Witness produces small pocket memorandum book.*)

Q. 10. Were these entries in the memorandum book made by you, and made at the time when they are dated in the book?

A. Yes, sir.

[*At the request of defendants' counsel, the examiner certifies that on the inside of the cover at the beginning of the book are the words "Underwood's bording meals," and also that the regular entries in the book commence at the top of the first page of the book with the following figures and words:*]

"1875 A marandum of carpenters bording the hands for building Elex Underwood's barn: Meals
April 14th 5 hands 1-2 day 8"

Then follow entries of the board of the hands along from day to day, with the number of hands and number of meals each day through the 12th of June, 1875. Then a half page is left blank, and at the top of the next page are the figures and words:

"1875 Bording carpenters after harvest.
August 9 By 7 hands one day 14 meals."

Then follow entries of the number of hands, the days and the number of meals to and including September 14th, 1875. A half page is then left blank, and at the top of the next page is the following entry:

"1875 Boarding carpenters wile bilding woodshed and reparing house:

Oct 11 by	3	meals
" 12 by 5 hands 1 day	11	"
" 13 by 5 hands 1 day	15	"
" 14 by 5 hands 1-2 day	10	"
	39	

Then half a page is left blank, and at the top of the next page are the figures and words:

"1875 Bording masons wile bilding the foundashion for wagon shed:

"Sep. 3 by 2 hands 1 day 6 meals
" 4 by 3 hands 1-2 day 6 " "

Immediately below this are the words:

"bording masons wile fixing house"
followed by entries from Oct. 18 to Oct. 30, inclusive, giving number of hands, days, and meals.

At the top of the next page commences the following entry:

"1875 Bording carpenter wile reparing basemen and making watter troug

Octo 28 by 1 hand 1 day	2 meals
" 29 by 1 hand 1 day	3 "
" 30 by	1
Nov 1 by 1 hand 1 day	2 "
" 2 by 1 hand 1 day	3 "
" 3 by 1 hand 1 day	2 "
" 5 by 1 hand 1 day	3 "
" 6 by 1 hand 1 day	2 "
" 8 by 1 hand 1 day	2 "
	20"

The next two pages are occupied with entries in September, October, November, and December, of the same year, and in February, June, and July, apparently of the next year, for boarding fencemakers while making barn-yard and fence. Then comes on the next page the following entry:

"1875 Bording masons wile bilding Cistorn

Nov 1 by 2 hands 1-2 day	4 meals
" 9 by 2 hands 1 day	6 "
" 11 by 2 hands 1-2 day	4 "
	14"

Then on succeeding pages follow sundry entries dated in 1875 and 1876, and sundry blank pages, after which occurs, at the top of a page, the following entry:

"1875 Bording hands from Mechanicksburg

Jan 2 1 hand carpenter	1 meals
" 4 1 hand 1 day slater	2 "
" 5 1 hand 1-2 day slater	2 "
	5

The remainder of the page is blank; at the top of the next page is the following entry:

"1875 Bording hand to Rase the first day barn
May 19 33 hands 1 meal 33 meals
" 25 Bording for the second day Rasen barn meles 223."

Then follow five pages of sundry entries which finish the book.

The book is about six inches long, by four wide, and contains sixteen leaves; the entries are written in ink.

Q. 11. I judge from the entries in your book that the barn was raised on the 19th and 25th days of May, 1875, and was slated, or partly slated, in June, 1875; am I correct?

A. Yes, sir.

Q. 12. Do you remember whether or not your son Andrew Evans worked for you that summer and fall of 1875?

A. Yes; on until the beginning of November.

Q. 13. Where did he then go?

A. He went to Ambrose Knaub's.

Q. 14. About how long did he work at Mr. Knaub's?

A. About a month, or within a day or two of that.

Q. 15. Where did he go to work after he got through at Mr. Knaub's?

A. To Squire Spahr's, Knaub's father-in-law.

Q. 16. Do you remember anything about your son Andrew, and your daughters, Jane and Sarah, making a visit together to your son Jacob at Milltown?

[*Objected to as not in rebuttal.*]

A. Yes, sir.

Q. 17. Can you tell me about when that visit was made?

[*Same objection.*]

A. It was made in the latter part of November, or beginning of December—I cannot tell the exact day. It was in 1875.

Q. 18. Where was Andrew working at the time when they made that visit?

[*Same objection.*]

A. At Ambrose Knaub's.

Q. 19. Do you remember what days of the week that visit was made on?

[*Same objection.*]

A. Saturday and Sunday.

Q 20. Did they return Sunday evening?

[*Same objection.*]

A. Yes, sir.

Q. 21. Were you at home that Sunday evening after their return from Milltown?

[*Same objection.*]

A. Yes, sir.

Q. 22. Was there any conversation in the family and with the girls that evening about their visit to Milltown?

[*Same objection.*]

A. Yes, sir.

Q. 23. Do you remember whether or not they mentioned anything that they had seen at Milltown during their visit that day?

[*Same objection.*]

A. Yes, sir.

Q. 24. What did they mention having seen there?

[*Same objection.*]

A. A talking-machine.

Q. 25. Did they that evening tell you whose talking-machine it was?

[*Same objection.*]

A. Yes; Drawbaugh's.

Q. 26. Did they mention anything that evening that Drawbaugh had told them about it, or about how far he thought it would talk?

[*Objected to as above and as incompetent.*]

A. Yes; they said he told them it could talk across the ocean.

Q. 27. Did you know Mr. Daniel Drawbaugh personally at that time?

A. No, sir.

Cross-examined by Mr. Storrow, de bene:

Cross-Q. 28. Tell me all that they said to you about that visit.

A. That is about all I know.

Cross-Q. 29. Were you at home when they got back that night?

A. Yes, sir.

Cross-Q. 30. Where did Andrew put up his horse that night?

A. At Knaub's.

Cross-Q. 31. Did he feed him at your house before he took him over to Knaub's?

A. No, sir; I don't want to be understood that Andy told me this; I have this just from the girls; I guess I mentioned that, didn't I?

Cross-Q. 32. Did Andrew have supper at your house that night?

A. No, sir; I think not.

Cross-Q. 33. Did he come over to your house that evening after supper?

A. Not as I mind of; no.

Cross-Q. 34. When he got there did he come into the house, or did he just drive there and leave his sisters, and then drive to Knaub's and stay there?

A. He left the girls either at the gate or over at the road, and then took his horse and buggy along over to Knaub's.

Cross-Q. 35. So he didn't come to the house at all?

A. Not that I mind of; he might have come after that, but I don't mind; I had no conversation with him anyhow that evening.

Cross-Q. 36. What time was it when they got home?

A. I can't tell exactly; it was about dark or after dark a little; it was late, middling.

Examination taken, reduced to writing, and by the witness affirmed and subscribed to before me, this 27th day of December, 1883.

FRED. M. OTT,
Examiner.

MOSES EVANS.

ELMIRA RENTZEL, *being produced, affirmed, and examined, saith:*

Examined by Mr. Jacobs:

My age is twenty-seven; residence in Dillsburg, York county, Pennsylvania.

Q. 1. You are a daughter of Moses Evans, who has just testified in this case, are you not?

A. Yes, sir.

Q. 2. He has testified that he moved upon the farm of Alexander Underwood, near Dillsburg, York county, in the spring of 1875. Do you remember that fact?

A. Yes, sir.

Q. 3. Do you remember the building of a barn upon that farm after your father moved there?

A. Yes, sir.

Q. 4. Where were you living at that time?

A. At Joseph Best's.

Q. 5. How long did you live with him?

A. Three years, beginning in 1874, the 14th of March.

Q. 6. Did you visit your father's frequently while you lived at Mr. Best's?

A. Yes, sir.

Q. 7. Were you at your father's any time during the building of the barn?

A. Yes, sir; I was at the raising.

Q. 8. Do you know of your brother Andrew living with Ambrose Knaub?

A. Yes, sir; I remember of him being there in the fall.

Q. 9. In the fall of what year?

A. In 1875.

Q. 10. Have you any knowledge of a visit made by your brother Andrew and your sisters Sarah and Jane to your brother Jacob at Milltown?

A. Yes, sir; I remember them telling me.

Q. 11. When did they tell you—how long after the visit was made?

A. They told me about a week afterwards, as near as I can tell.

Q. 12. Were you at home at your father's at the time of the visit?

A. No, sir; I was at Joe Best's then.

Q. 13. Were you at home at the time they told you about the visit?

A. Yes, sir.

Q. 14. Did they tell you upon what day they had started, and on what day they had returned?

A. Yes, sir; they told me they had started on Saturday evening and returned on Sunday evening.

Q. 15. Did they tell you of any special place of interest at which they had been during that visit?

A. Yes, sir; they told me they had been at Mr. Drawbaugh's shop.

Q. 16. Did they say who had taken them there?

A. Yes, sir; they said my brother Jake had taken them there.

Q. 17. Did they tell you who was along with them to Mr. Drawbaugh's shop?

A. No, sir.

Q. 18. Did they tell you what they had seen there?

A. They told me they had seen a talking-machine there—that Mr. Drawbaugh could talk across the ocean—and several clocks.

Q. 19. Did they say who was present when they saw the talking-machine—I mean who composed their party to Mr. Drawbaugh's shop?

A. No, sir.

Q. 20. Who told you of this—your sister Sarah, or your sister Jane, or both?

A. Both of them told me.

Q. 21. Did you ever make any visit to your brother Jacob at Milltown? If so, when?

A. Yes, sir; I was down in 1876, in February some time.

Q. 22. Was any allusion then made in your brother Jacob's family to the visit of your brother Andrew and your two sisters during the previous fall?

A. Yes, sir; my brother Jacob told me they were down.

Q. 23. Was anything then said about their visit to Drawbaugh's shop?

A. No, sir; I don't remember as there was.

Q. 24. Was anything then said to you about Drawbaugh's talking-machines? and if so, what and by whom?

A. Yes, sir; my brother Jake said that Mr. Drawbaugh had a talking-machine, and he would take me there one day; but we couldn't get in, or Mr. Drawbaugh was not at home that day, or I don't know what was the matter; but we didn't get there.

Q. 25. Was any one with you on your visit to your brother that time?

A. No, sir; I was there myself.

Q. 26. How often did you visit your brother whilst he lived at Milltown?

A. I made two visits with him while he was there.

Q. 27. With whom did you make the second, and when was it, as near as you can tell?

A. With my sister Jane, in March, 1879.

Q. 28. When were you married?

A. On the 3d of last April.

[*Each and every question and answer objected to by Mr. Storrow as incompetent and not in rebuttal.*]

Cross-examination, de bene, by Mr. Storrow:

Cross-Q. 29. You have stated some things which you say your sisters told you soon after their return from Jacob's; will you tell me what else they said about that visit to Milltown?

A. They told me that they had seen this talking-machine that Mr. Drawbaugh could talk across the ocean with, and several clocks.

Cross-Q. 30. Don't you remember anything else they told you?

A. No, sir.

Examination taken, reduced to writing, and by the witness affirmed and subscribed to before me, this 27th day of October, 1883.

FRED. M. OTT,
Examiner.

ELMIRA RENTZEL.

Adjourned until October 29, 1883, at ten, A. M.

OCTOBER 29, 1883, 1:30 P. M.

Examination resumed.

Present, Mr. Storrow for complainants, and Mr. Hill and Mr. Jacobs for respondents.

SARAH E. EVANS, *being recalled, saith:*

Cross-examined by Mr. Storrow:

Cross-Q. 63. Referring to the visit to your brother Jacob, when you say you went to Drawbaugh's shop—I understand that you went from your father's to Milltown Saturday afternoon, and returned Sunday afternoon; is that the fact?

A. Yes, sir; it was in the evening rather, both times.

Cross-Q. 64. How late in the evening was it when you got to Jacob's Saturday?

A. It was about nine o'clock.

Cross-Q. 65. Did you see anybody except your brother Jacob's household that night?

A. Yes, sir; Emanuel Ditlow was there.

Cross-Q. 66. Was he Mrs. Mary Evans' brother, and where did he live?

A. Yes, sir; he was Mrs. Mary Evans' brother; I don't know where he lived that time.

Cross-Q. 67. Where did you go to the next morning before going to the shop?

[*Objected to by Mr. Hill as assuming that the witness went anywhere before going to the shop.*]

A. We didn't go anywhere before going to the shop.

Cross-Q. 68. Where did you go to between the time you left the shop and dinner-time?

A. We didn't go anywhere; we went right up to my brother's.

Cross-Q. 69. What time did you start to go home in the afternoon—how long after dinner?

A. I can't just tell exactly, but it was some time between three and four—along near four somewheres.

Cross-Q. 70. Was it after dark or before dark when you got home?

A. After dark.

Cross-Q. 71. Did your brother go up to the house with you, or where did he leave you?

A. No, sir; he left us out there at the lane. It is a little piece up the road from the house. It was just a small lane that led from the barn up to the public road.

Cross-Q. 72. Did you stop anywhere as you were going home?

A. No, sir.

Cross-Q. 73. What kind of weather was it?

A. It was pretty cold on Sunday evening.

Cross-Q. 74. Was it snowing?

A. No, sir.

Cross-Q. 75. What did you do between dinner-time and the time when you started to go home?

A. As far as I can remember, we just were in the room there altogether talking.

Cross-Q. 76. You say it didn't snow. Did it rain?

A. No, sir; it was cloudy, but it didn't give no falling weather.

Cross-Q. 77. Did any of the neighbors come in to call on you that afternoon at your brother's?

A. I ain't positive about that. It seems to me, though, they did some of them come in.

Cross-Q. 78. Who came, if you remember?

A. I don't remember who came.

Cross-Q. 79. Do you live at your father's now?

A. Yes, sir.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 29th day of October, 1883.

FRED. M. OTT,
Examiner.

SARAH E. EVANS.

AMERICAN BELL TELEPHONE COMPANY, - 8

JACOB EVANS, *being produced, affirmed, and examined, saith:*

Examined by Mr. Hill:

Q. 1. Are you the same Jacob Evans who was examined as a witness on behalf of complainants in this case, at Philadelphia, on January 1 and 2, 1883, and whose testimony appears in complainants' printed rebutting record, pages 974 to 989, inclusive?

A. Yes, sir.

Q. 2. You testified at that time, (Answer 19,) that you worked at Etter & Shanklin's mill, below Milltown, from the beginning of November, 1874, to the same time in September, 1875; and (Answer 28) that when you left that mill in September, 1875, you went to Milltown; and (Answers 32 and 61) that when you first moved to Milltown you lived in a house owned by George Leonard, and remained there until the spring of 1876, when you moved to Dellinger & May's house and stayed there till sometime in July, 1876, when you moved into another house of George Leonard's; does your present recollection agree with that?

A. Yes, sir.

Q. 3. At what time in the spring of 1876 did you move out of George Leonard's house into Dellinger & May's house?

A. About the first of April.

Q. 4. You worked for Dellinger & May about a month before you moved into their house, did you not?

A. Yes, sir.

Q. 5. When you moved to Milltown in September, 1875, where was the house situated that you moved into at that time—the first house that you lived in in Milltown?

A. Right opposite Daniel Fetrow's, where Clendennin's new store stands at present.

Q. 6. Was that house which you first moved into at Milltown an old house, painted on the outside, and has it since been torn down?

A. Yes, sir.

Q. 7. You lived there continuously from September, 1875, until April 1, 1876; state whether you ever lived in the house after you moved away on the 1st of April, 1876.

A. Yes, sir; I lived there from September, 1875, to April, 1876, and never lived there afterwards.

Q. 8. Do you remember the fact of your brother Andrew, your sister ane, and your sister Sarah, all three together making a visit to your family at Milltown on one occasion?

A. Yes, sir.

Q. 9. Did they ever visit you—all three together—on any other occasion, or not?

A. No, sir; not the same three.

Q. 10. In what house were you living when Andrew, Jane, and Sarah visited you together on that occasion?

A. In George Leonard's.

Q. 11. In the first house that you lived in Milltown, or in some other house that you lived in later?

A. The first house that I lived in—the one that I moved in in September, 1875.

Q. 12. It is in evidence here that that visit took place about the last part of November or first part of December, 1875; what is your recollection about that?

[*Objected to by Mr. Storrow as leading.*]

A. Yes, sir; it was about that time—the latter part of November or beginning of December.

Q. 13. Do you remember what day of the week it was when they came down to visit you, and how long they stayed, and what day of the week it was when they went back to Dillsburg?

A. It was on Saturday evening when they came to my place; and they went back to Dillsburg on Sunday evening, or Sunday afternoon some ...

Q. 14. Do you recollect going anywhere with them and your wife while they were visiting you on that Sunday in the fall of 1875? If so, where did you go with them?

A. Yes, sir; I went with them to a certain place—to the machine-shop of Daniel Drawbaugh.

Q. 15. Did you find Mr. Drawbaugh there at the machine-shop?

A. Yes, sir.

Q. 16. Tell us what took place there in the machine-shop while you were there that day with your brother, your wife, and your two sisters?

A. We got in conversation with Daniel Drawbaugh, and he was explaining his inventions he had there—his clocks—and talking through his telephone.

Q. 17. Do you remember whether he called it telephone or talking-ing machine that day?

A. Talking-machine.

Q. 18. Who talked through the machine, and who listened at the machine that day?

A. It runs through my mind it was myself. Dan talked through the talking-machine, and I listened.

Q. 19. Do you recollect whether Mr. Drawbaugh went out of the room in which you were listening, and into another room to talk to you through the talking-machine, or not?

A. So far as I can remember, he did go into another room.

Q. 20. What is your recollection as to the room in which you listened at the talking-machine, and the room which he went into to talk through the talking-machine—where these rooms were situated?

A. They were both on the left-hand side of the shop as you come in. There was a sort of a hall on the right hand, and these rooms were on the left hand or east side of the shop. The one that Dan was in was the north room, at the left-hand side, and I was in the one towards the south.

Q. 21. Was the room that you were in the large room?

[*Objected to as leading.*]

A. Not very large.

Q. 22. Some of the other witnesses who have testified on the subject have testified that there was a room on the right-hand side as you went in, and that you listened at the talking-machine in that room on the right-hand side; I desire to call your attention to their testimony on that point, and to ask you whether it refreshes your recollection as to the facts, or not?

[*Objected to as leading and peculiarly improper under the circumstances.*]

A. I think they have reference to the room I was speaking of—the south room.

Q. 23. Do you recollect whether Mr. Daniel Drawbaugh said anything that day, while you and your party were there at the shop, in regard to the distance to which he could talk with his talking-machine? And if so, please state what it was that he said.

[*Objected to as leading and calling for incompetent testimony.*]

A. Yes, sir; he spoke to me that he could use that machine, or talk with that machine, across the ocean into Europe—that is, in case he would have his wires stretched up in operation,—to a man, the same as him and I was talking there face to face.

Q. 24. When you testified in behalf of the complainants last winter, at Philadelphia, you stated that you then had no recollection of ever

seeing or hearing of Mr. Drawbaugh's talking-machine invention prior to the year 1877. I suppose that the facts which you have just testified to here to-day did not occur to your memory at that time; am I correct?

A. Yes, sir; so I stated, as it had slipped my memory and hadn't occurred to it at that time; and it has since come to my memory.

Q. 25. Will you tell us when and how these facts happened to come back to your memory?

A. After coming back from Philadelphia, through the conversation of my wife and I, they were refreshed to my memory.

Q. 26. How soon was that after you came back from testifying for the complainants, at Philadelphia, last winter?

A. Some time during that week.

Q. 27. At that time did you tell your wife what you had testified to at Philadelphia?

A. Yes, sir.

Q. 28. What did she say when you told her about it?

A. She asked me whether I couldn't remember the time that two of my sisters and my brother was down at my place, and whether I didn't recollect the time that we had been down to the machine-shop together, and the conversation that we had between us and Dan there.

Q. 29. When she called your attention to that visit of your brother and two sisters, and your all going down there to the shop together, and your conversation there, did it begin to come back to your memory, as you have now testified?

A. Yes, sir; I now well remember it.

Q. 30. How long was it after that before you told Mr. Drawbaugh, or anybody connected with the suit on his side, about the mistake which you had made in your testimony at Philadelphia?

A. How long I don't remember, but it was some time, either in March or April—some time during that time.

Q. 31. State whether or not you told other persons about the mistake which you had made in your testimony at Philadelphia before you told Mr. Drawbaugh or anybody connected with his side of the case.

A. That other answer has come to my memory, if I can recall it. If I have a right to recall my other answer, it was in the latter part of February or beginning of March that I told Mr. Drawbaugh.

[*Witness then states in answer to the question.*]

Yes, sir; I had previously talked to different ones about it.

Q. 32. Do you remember whether or not your wife's brother, Emanuel Ditlow, was at your house that Sunday, in the fall of 1875, when Andrew, Jane, and Sarah were visiting you?

A. Yes, sir; he came there some time that fall and stayed with me that winter.

Q. 33. My question was: Do you remember his being at the house or not that Sunday while they were there?

A. I am not fully positive, but I think he was.

Q. 34. Do you remember whether or not he went down to Drawbaugh's shop with you and the others that day?

A. No, sir; I don't remember of him going along, and if he did go along down I can remember nothing of him being with us in the shop.

Q. 35. With your memory now refreshed, can you state whether or not that Sunday, about the 1st of December, 1875, was the first time when you had ever seen or heard of Mr. Drawbaugh's talking-machines?

A. Yes, sir; my memory is now refreshed that I heard of the talking-machines prior to that time.

Q. 36. What is your memory now as to how long prior to that time you had heard of Mr. Drawbaugh's talking-machines?

A. During the latter part of 1874—or, not exactly the latter part of 1874, but from September, 1874, on to the time when we went down to the machine-shop—from that on.

Q. 37. Do you mean to be understood that you heard of them along about September, 1874, and along from that time to the time of the visit in the fall of 1875, or that you heard of them at some time between those two dates? your meaning is not quite clear, and I would like to have it clear.

[*Objected to as leading.*]

A. I wish to be understood between the two dates.

Q. 38. Is it your recollection now that you heard of them before you moved up to Milltown, or not?

A. Yes, sir; so far as I can remember.

Q. 39. Is it your recollection now that you heard of them before you went to work at Etter & Shanklin's mill, or not?

A. Not as I can remember; I may have and may not.

Cross-examined by Mr. Storrow:

Cross-Q. 40. At the time when you made the visit to Mr. Drawbaugh's

shop, at which you think you saw the telephones, how long were you there?

A. We may have been there a couple of hours.

Cross-Q. 41. I want your recollection, not your guess-work, about it; have you got any recollection?

A. I can't tell the exact length of time; as I said before, about two hours—a couple of hours.

Cross-Q. 42. How long did you listen at it?

A. That I can't remember.

Cross-Q. 43. What did you hear through it?

A. I remember nothing that I heard.

Cross-Q. 44. How near together were the two Leonard houses that you lived in?

A. Something like twenty or thirty steps apart.

Cross-Q. 45. Were they on the same side of the road?

A. Yes, sir.

Cross-Q. 46. At the upper end of the town or lower end of the town?

A. The upper end.

Cross-Q. 47. In your 31st Answer to-day, you say that before telling Mr. Drawbaugh of your change of recollection, you had previously talked to different ones about it; who had you talked with about it before talking with Mr. Drawbaugh?

A. I can't just positively give you the names; but it was through the conversations with customers back and forth there at the mill, in talking about being down to Philadelphia.

Cross-Q. 48. Were your mill customers the only persons you spoke to about it, except your wife, before you told Mr. Drawbaugh?

A. I won't say that they were the only persons, as there had been other ones back and forward at my place; I may have said something to them about it.

Cross-Q. 49. What other ones?

A. It may have been Abe Ditlow or Emanuel or other visitors I had back and forward at my place; I may have said something to them before I talked to Drawbaugh.

Cross-Q. 50. Do you remember whether you did or not?

A. I can't positively say.

Cross-Q. 51. What is your recollection about it, if you have got any?

A. I don't remember anything in particular more than that they were

there at my place, and I can't say whether the subject was opened or not while they were there.

Cross-Q. 52. Where were you when you first spoke to Mr. Drawbaugh about it?

A. In the mill-office.

Cross-Q. 53. How did he happen to be in your mill-office?

A. He happened to come along there; and Dan and I are well acquainted; and he stopped and we got this here telephone question up—or talking-machine as he called it at that time.

Cross-Q. 54. How long did he stop at your mill-office that time when he just happened along?

A. He stopped there something like two or three hours, and got his dinner and had his horse fed.

Cross-Q. 55. What time of day did he get there?

A. He got there somewheres about ten o'clock.

Cross-Q. 56. Whose horse did he have?

A. It was Clendennin's team; him and Harry Clendennin was together.

Cross-Q. 57. Do you mean C. S. Clendennin, and is Harry his son?

A. Yes, sir; it was C. S. Clendennin's team, and Harry was his son.

Cross-Q. 58. How far is it from your place to Eberly's Mills where Mr. Drawbaugh lives?

A. Between seven and eight miles.

Cross-Q. 59. Where else did Mr. Drawbaugh go that day?

A. He went to Yocumtown; any further I can't say.

Cross-Q. 60. How far is Yocumtown from your place?

A. About two miles.

Cross-Q. 61. When did you next talk with Mr. Drawbaugh about it?

A. Sometime afterwards; it may have been a week or two weeks.

Cross-Q. 62. Where?

A. At the same place—the mill-office.

Cross-Q. 63. Who was with him then?

A. Jacobs.

Cross-Q. 64. When did you next talk with him about it?

A. I can't tell; I have seen him different times passing along there since; he has stopped with me, but I don't know that we had much between us about it that is worth mentioning.

Re-direct by Mr Hill:

Q. Q. 65. What do you estimate the distance to be from Mr. Clen-

dennin's store at Milltown, by the road, to the Alexander Underwood farm, on which your father was living in the fall of 1875?

A. I guess it is about thirteen miles.

Examination taken, reduced to writing, and by the witness affirmed and subscribed to before me, this 29th day of October, 1883.

FRED. M. OTT,
Examiner.

JACOB EVANS.

[*The examination on Nov.* 27, 1883, *at* 10, *A. M., was begun with the following deposition, which is printed here for convenience.*]

SAMUEL B. HEIGES, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

My age is between forty-six and forty-seven; residence, Shippensburg, Cumberland county, Pa.; occupation, teaching.

Q. 1. Are you the principal of the Pennsylvania State Normal School of the Seventh district, at Shippensburg?

A. Yes, sir.

Q. 2. How long have you held that position?

A. This is my second year.

Q. 3. George W. Heiges, who testified as a witness for the Bell Telephone Co., in this suit, testified on page 1094 of complainants' printed rebutting record, that he succeeded his brother, Prof. S. B. Heiges, as a teacher, at Cedar Run school, near the residence of Mr. William R. Gorgas, a short distance west of Milltown, and that he himself taught that school in the winter of 1860-61; are you the Prof. S. B. Heiges, and did you teach that school for several years immediately prior to the school term of 1860-61?

A. I am, and I did.

Q. 4. Are you acquainted with Daniel Drawbaugh, of Eberly's Mills or Milltown, Cumberland county, Pennsylvania? And if so, how long have you known him?

A. I am; I have known him upwards of twenty-six years.

Q. 5. You knew him, then, at the time that you taught school there, did you?

A. I did.

Q. 6. What was the time of the last term of school that you ever taught at Milltown or its vicinity?

A. The winter term of 1859-60.

Q. 7. Do you remember seeing Mr. Drawbaugh at your school-house while you taught there? If so, state how he happened to be there—what occasion brought him there and to what extent.

[*Objected to as not in rebuttal.*]

A. Yes, sir; he attended quite frequently during a special session held each Friday evening for investigations in various departments of physical science.

Q. 8. Give us an idea of what was done on those Friday evenings by way of explaining and illustrating physical science, and by whom; and state what departments of physical science were there discussed.

[*Objected to as not in rebuttal.*]

A. I had a special class of five—on some occasions there were more than five—young men to whom I taught animal and vegetable physiology, physics, and chemistry; the lesson was almost invariably followed by experiments lasting half an hour or more.

Q. 9. Was Mr. Daniel Drawbaugh one of the class who attended those special sessions for the purpose of instruction in physics?

[*Same objection.*]

A. He was not, but he asked permission to be present.

Q. 10. Was he present frequently at those sessions?

[*Same objections.*]

A. Yes, sir; upon almost every occasion.

Q. 11. Did the subject of electricity fall within the field of those discussions and explanations at those sessions?

[*Same objection.*]

A. Yes, sir; both electricity and magnetism.

Q. 12. Do you remember having any conversations with Mr. Daniel Drawbaugh during those sessions, with regard to the subjects of electricity and magnetism? If so, state anything that you remember of his saying to you at that time.

[*Same objection.*]

A. Yes, sir; on several occasions he spoke of a clock to be run by a magnetic current of the earth, and of speaking through the telegraphic wire by electricity.

Q. 13. When he spoke of speaking through the telegraphic wire by electricity at that time, did he refer to it as something that had been

done, or as something that he deemed to be possible, or as something that he deemed impossible?

[*Same objection, and as leading.*]

A. I inferred from his conversation that he thought it was something that could and would be accomplished.

Q. 14. I understand that you have never taught school at or near Milltown since 1860; have you ever been at Mr. Daniel Drawbaugh's shop, in Milltown, since 1860, and if so, how many times?

[*Same objection.*]

A. I have not taught near Milltown since 1860; I have visited his shop twice, to the best of my recollection, since that date.

Q. 15. Will you state when those two visits to his shop, mentioned in your last answer, were made?

[*Same objection.*]

A. They were both made during the months of June or July during the different summers between the years 1871 and 1874; I also visited the shop this morning, making my third visit.

Q. 16. At the time when you made the last of those two visits to his shop, which you made within the time included between the summer of 1871 and the summer of 1874, how long were you at the shop, whom did you see there, and was Mr. Drawbaugh himself there or not?

[*Same objection.*]

A. I was there perhaps forty-five minutes; I accompanied my brother-in-law, Dr. M. B. Mosser; Mr. Daniel Drawbaugh was the only person present.

Q. 17. At the first visit which you made to Mr. Drawbaugh's shop within the time included between the summer of 1871 and the summer of 1874, how long were you at the shop, whom did you see there, and was Mr. Drawbaugh there himself or not?

[*Same objection.*]

A. I was there about 45 minutes, in company with Dr. Mosser; I saw Luther Gorgas, the son of Mr. William R. Gorgas—I am told his full name is William Luther Gorgas; Mr. Drawbaugh was not present.

Q. 18. Then, after the year 1860, and from that time down to this morning, you have never seen Mr. Daniel Drawbaugh at his shop at Milltown but once; and that once was at some time between the first

day of June, 1871, and the first day of August, 1874, if I understand you correctly.

[*Same objection.*]

A. Yes, sir; excluding this morning.

Q. 19. Will you state whether you are entirely positive that the time when you saw him at his shop was between the first day of June, 1871, and the first day of August, 1874, and how you are enabled to fix the fact positively?

[*Same objection.*]

A. I am positive that I saw him at the shop between those two dates from the fact that I was visiting my father-in-law, George Rupp, Jr., at Shiremanstown, who moved there in the spring of 1871, and that my brother-in-law, Dr. Mosser, still lived in Shiremanstown.

Q. 20. Did your brother-in-law, Dr. Mosser, afterwards move away from Shiremanstown, and if so, about what time, and to what place?

[*Same objection.*]

A. He did; he moved in the spring of 1874 to Mechanicsburg, Cumberland county, Penna.

Q. 21. In my succeeding questions, until I explicity notify you, I shall refer to the particular visit which you made at Mr. Drawbaugh's shop on the occasion when Mr. Drawbaugh himself was there present; on that occasion how happened you to go down to Mr. Drawbaugh's shop from Shiremanstown with Dr. Mosser?

[*Same objection.*]

A. I was visiting my father-in-law, and after breakfast called on Dr. Mosser at his home in Shiremanstown; he told me he had some business with Mr. Drawbaugh, and asked me to ride along.

Q. 22. Was that during one of your school vacations, and if so, state where you were teaching at that time?

[*Same objection.*]

A. It was; I was teaching in York, Pa.

Q. 23. At what time of year did your school vacations occur?

[*Same objection.*]

A. We had two vacations each year; the one from the latter end of June to the first Monday of September; the other, the week during the Christmas holidays.

Q. 24. Did that visit to Mr. Drawbaugh's shop, when you saw him there, with Dr. Mosser, occur during the summer vacation, or the Christmas vacation?

[*Same objection.*]

A. That visit occurred during the summer vacation.

Q. 25. Dr. Mosser, as you have testified, stated that morning that he was going down to see Mr. Drawbaugh on some business; state what that business related to, if you know.

[*Same objection.*]

A. I do not know positively. Their conversation was private, but I inferred from his remarks on our way home that it related to the faucet company.

Q. 26. Was Dr. Mosser a member of the faucet company, according to your information?

[*Same objection.*]

A. He told me he was.

Q. 27. Do you remember what other gentlemen you understood to be members of the faucet company at that time?

[*Same objection.*]

A. He mentioned eight or nine names; I can remember William R. Gorgas, M. B. Mosser, Henry S. Rupp, Mr. Hertzler, John F. Hursh, and John Sheeley.

Q. 28. About the first day of July, 1873, that faucet company sold out its business and machinery to Hauck Bros. & Co., of Mechanicsburg. At the time when you and Dr. Mosser saw Mr. Drawbaugh in his shop, had they sold out, or were they still the proprietors of the faucet business?

[*Same objection.*]

A. They were still the proprietors; Dr. Mosser and my brother-in-law, Henry S. Rupp, both informed me of that fact during my visit to Shiremanstown.

Q. 29. Did they mention to you anything about the Hauck brothers contemplating the purchase?

[*Same objection.*]

A. No, sir; neither of them.

Q. 30. While you were there at Mr. Drawbaugh's shop with Dr. Mosser on that occasion, did Mr. Drawbaugh say anything to you about an invention of his. If so, what invention?

[*Same objection.*]

A. Yes, sir; he spoke of and exhibited to me his talking-machine, as he called it.

Q. 31. Did he talk through it to you?

[*Same objection.*]

A. No, sir.

Q. 32. Did he at that time make any statement to you about it's having been talked through by himself or others, or not?

[*Objected to as above, and also as calling for the defendant's own statements in his own favor upon the question in dispute.*]

A. He did; he said he had talked through it, and some other parties had.

Q. 33. Did he say whether or not, when he and others had talked through it, it had operated so that the talk could be heard through it?

[*Same objection, and objected to as leading.*]

A. Yes, sir; he did; he said it had so operated.

Q. 34. Will you please look at the machines now shown you, marked "A," "B," "C," "F," and "I," and state whether you recognize among them anything that you saw at Mr. Drawbaugh's shop at the visit when you and Dr. Mosser were there together?

[*Same objection.*]

A. This is the one that I saw [*taking up instrument "C."*]

Q. 35. How long on that occasion did Mr. Drawbaugh talk to you about his talking-machine invention?

[*Same objection.*]

A. I suppose not more than five minutes; our conversation occurred after Dr. Mosser and he were through.

Q. 36. Did you take the talking-machine in your hand at that time or not?

[*Same objection.*]

A. I did; I remember I caused the diaphragm to vibrate, just as I do now, by placing my finger against it and pressing it in.

Q. 37. What kind of a diaphragm was on the machine at that time—metal, or wood, or membrane, or what?

[*Same objection.*]

A. A metal diaphragm.

Q. 38. Did Mr. Drawbaugh say anything at that time about how the

sound of the voice operated the machine? If so, what, so far as you remember?

[*Same objection.*]

A. Yes, sir; I remember he said the voice produced pulsations.

Q. 39. Did he or did he not make any reference to the use of a magnet in connection with the machine?

[*Same objection.*]

A. Yes, sir; he spoke of applying both magnetism and electricity.

Q. 40. Are you able to say whether there was or was not, at that time, a small electro-magnet, with its poles in close proximity to the armature on the diaphragm?

[*Same objection.*]

A. I am not able to say whether there was, or whether there was not.

Q. 41. When did you next see this machine marked "C" after the visit of Dr. Mosser and yourself to Mr. Drawbaugh's shop at that time?

[*Same objection.*]

A. This morning, in Mr. Jacobs' office.

Q. 42. In the presence of Mr. Ott, the examiner here, was it?

[*Same objection.*]

A. Yes, sir.

Q. 43. Did Mr. Ott exhibit it to you this morning in Mr. Jacobs' office, together with a number of other machines?

[*Same objection.*]

A. He did.

Q. 44. Did you immediately pick this one out as the one you had seen?

[*Same objection.*]

A. I recognized it among the rest as soon as I saw it.

Q. 45. Before Mr. Ott exhibited it to you, had you ever seen any drawing of it, or heard any description of it, since you were at Mr. Drawbaugh's shop with Dr. Mosser?

[*Same objection.*]

A. I had not.

Q. 46. When you first learned of the speaking telephone coming into public use in this county, can you state whether you, at that time,

remembered and spoke of the fact of your having seen an electric or magnetic talking-machine long prior?

[*Same objection.*]

A. Yes, sir; I referred to this instrument incidentally in class; and, if I mistake not, publicly at Gettysburg at the teachers' convention, in connection with the instrument used to represent sound by flashes of reflected light.

Q. 47. State whether that was or was not prior to your knowledge of any litigation involving Mr. Drawbaugh's telephones, and prior to any communication ever made to you in regard to your testimony or knowledge of the Drawbaugh machine.

[*Same objection.*]

A. Before my classes, it was prior to any knowledge of litigation in the case; at Gettysburg, it may have been subsequent to that knowledge, as I have lectured there several years, and cannot definitely fix the occasion. All references were prior to any intimation that I should be called upon to testify in this case.

Recess until two, P. M.

October 27, 1883, 2 P. M.

Examination resumed.

Cross-examined by Mr. Storrow, de bene:

Cross-Q. 48. Do you remember whether you have been in Shiremanstown or in the vicinity of Milltown since you stopped teaching school there on any occasion except those you have mentioned?

A. I have been to Shiremanstown several times a year; I have been to Milltown but once that I can remember.

Cross-Q. 49. When was that?

A. About three years ago, during summer vacation.

Cross-Q. 50. Where did you teach in York?

A. I established a school in Weiser's building, East Main street; I took charge of Cottage Hill College in the spring of 1862; I stayed there one year; I next acted as county superintendent of common schools for five years, during which time I did not teach; I was co-principal of the York County Academy after that for two years; I was then assistant principal of the high school of York for one year, and was then called to the chair of physical sciences in the York Collegiate Institute; I stayed there either six or seven years; that closed my teaching career in York.

Cross-Q. 51. When you saw the instrument "C" at Mr. Drawbaugh's shop, was it in the same condition it is in now, and if not, what were the differences?

A. As I remember it, it was in the same condition as now, but not so much soiled, and did not have the writing upon it, which I presume has been put upon it by the examiner.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 27th day of October, 1883.

FRED. M. OTT,
Examiner.

S. B. HEIGES.

During the taking of the deposition of Jacob Evans, Nov. 29th, Charles Howson, Esq., appeared as one of the counsel for complainants.

Adjourned until October 30, 1883, at ten, A. M.

October 30, 1883, 10, *A. M.*

Examination resumed pursuant to adjournment.

Present, Mr. Storrow and Mr. Howson for complainants, and Mr. Hill and Mr. Jacobs for respondents.

MRS. MARGARET BRENNEMAN, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

Q. 1. What is your husband's name, and where do you live?

A. John M. Brenneman. We live in River avenue, near Vine street, Harrisburg.

Q. 2. When were you married to Mr. Brenneman?

A. December 24, 1872.

(*Witness produces her marriage certificate, showing that she was married at Middletown, Dauphin county, Pennsylvania, by Rev. S. W. Hoffman, on the 24th day of December, A. D.* 1872.)

Q. 3. What was your maiden name before you were married to Mr. Brenneman?

A. Maggie Darr.

Q. 4. Are you a daughter of William Darr, who was examined as a witness for the Bell Telephone Company in July, 1882, and whose depo-

sition appears in complainants' printed rebutting record, pages 358 to 366 inclusive?

A. Yes, sir.

Q. 5. Mr. Jacob Carns, who was examined as a witness for complainant in this case in December, 1882, and whose deposition appears in their said rebutting record, pages 883 to 924 inclusive, testified in substance that on the 27th day of February, 1869, while he was working in the shop of the Drawbaugh Manufacturing Company, at Milltown, Cumberland county, Pennsylvania, he went to board in Mr. Daniel Drawbaugh's family, and boarded there till the 7th day of August, 1869, [see answers 3 and 9;] also, that when he first went to Mr. Drawbaugh's to board he was giving Emma Drawbaugh music lessons, [see answers 18 to 20 inclusive;] also, that while he boarded there at Mr. Drawbaugh's, a girl named Maggie Darr was employed in Mr. Drawbaugh's family, [see answers 247 to 263 inclusive;] are you the Maggie Darr who worked then in Mr. Drawbaugh's family, or not?

A. Yes, sir.

Q. 6. How long did you work in Mr. Drawbaugh's family at that time, so far as you can remember?

A. As near as I can remember, about eight or nine weeks.

Q. 7. After that eight or nine weeks were over, did you ever work again in Mr. Drawbaugh's family or not?

A. No, sir.

Q. 8. Your father testified [see complainant's printed rebutting record, p. 358, ans. 1) that he left Milltown in 1870; did you leave Milltown when he did, or did you remain in Milltown after your father left?

A. I left when he did.

Q. 9. Have you ever lived in Milltown since the time when he and you left, or not?

A. No, sir.

Q. 10. Where did you make your home after you left Milltown, and up to the time you were married in December, 1872?

A. In Highspire, Dauphin county, Pa., about five miles from Harrisburg, in my father's family.

Q. 11. State whether or not you have been in the village of Milltown since your marriage in December, 1872.

A. No, sir.

Q. 12. State, if you remember, whether you were ever in the village

of Milltown between the time when your father and you moved away from there, in 1870, and the time when you were married, in 1872.

A. Yes, sir; I passed through once.

Q. 13. Who was with you, and did you stop anywhere in the village as you passed through?

A. My husband was with me; we did not stop; he was not my husband at that time.

Q. 14. Then, with the exception of once passing through the village of Milltown in company with Mr. Brenneman before your marriage, but not stopping there anywhere, you have never been in the village of Milltown since you moved away from there in 1870, if I understand you correctly; am I right about that?

A. Yes, sir; you are right.

Q. 15. At the time when you worked in Mr. Daniel Drawbaugh's family, in 1869, do you remember whether Mr. Drawbaugh was keeping boarders or not?

A. Yes, sir; I do; he was keeping boarders.

Q. 16. Who boarded in his family at that time?

A. Jacob Carns, Charles Umberger, Richard Egborn, and John Schrader.

Q. 17. Were they employed as hands working in the shop of the Drawbaugh Manufacturing Company at that time?

A. Yes, sir; they were.

Q. 18. Do you remember anything about Mr. Carns giving Emma Drawbaugh music lessons while you were there?

A. Yes, sir; I do.

Q. 19. At the time when you worked in Mr. Drawbaugh's family, in 1869, did you hear or know anything about an invention of his which he called the talking-machine, or not?

A. Yes, sir; I did.

Q. 20. Did you ever see it or any part of it at that time, or not?

A. Yes, sir; I did.

Q. 21. Will you tell us what you remember of it at that time—that is, what you remember seeing?

A. I remember of seeing a glass frosted over with something like lime. It was a glass something like a goblet; it is a long time ago, but I remember seeing it.

Q. 22. Frosted inside or outside?

A. Frosted inside.

Q. 23. Will you tell us whether or not Mr. Drawbaugh's talking-machine invention was talked about in his family and among his boarders, at the time when you lived in his family?

[*Objected to as leading.*]

A. Yes, sir; it was.

Q. 24. Did you hear them talking about it at that time, or not?

[*Same objection.*]

A. Yes, sir; I did.

Q. 25. Whom did you hear at that time talking of it in his family or among his boarders?

A. I heard his wife and his boarders all talk about it.

Q. 26. Will you state the names of his boarders whom you heard talk about it at that time?

A. Mr. Carns, Mr. Umberger, Mr. Egborn, and Mr. Schrader.

Q. 27. Are you positively sure that you heard Mr. Jacob Carns talk about it at that time when you lived in Mr. Drawbaugh's family and he boarded there?

A. Yes, sir; I am positively sure.

Q. 28. Do you remember whether it was talked about quite commonly in Mr. Drawbaugh's family—a good deal talked about there—or not?

[*Objected to as leading.*]

A. Yes, sir; it was.

Q. 29. Do you remember whether Mr. Drawbaugh's wife encouraged or opposed him in regard to his talking-machine invention, at that time while you lived there in the family?

[*Objected to as leading and calling for incompetent testimony.*]

A. She opposed him.

Q. 30. While you lived in Mr. Drawbaugh's family, did your father and his family live in Milltown?

A. Yes, sir; they did.

Q. 31. Were you in the habit of visiting your father's family frequently while you lived at Mr. Drawbaugh's?

A. Yes, sir; I was.

Q. 32. State whether or not Mr. Drawbaugh's talking-machine was a matter that was known and talked about in your father's family at that time while you lived at Mr. Drawbaugh's?

A. Yes, sir; it was.

Q. 33. Is your mother still living?

A. Yes, sir; she is.

Q. 34. Is she living with your father, or separated from him?

A. She is separated from him.

Q. 35. How long has she been separated from him?

A. Going on two years.

Q. 36. Do you know about what her age is?

A. Her age is about fifty-four.

Q. 37. When your father was living in Milltown up to the year 1870, when he moved away, was he a temperate or an intemperate man with regard to the drinking of intoxicating liquors?

A. He drank a great deal.

Q. 38. Did he drink so much as to seriously impair his bodily health and mental condition or not?

A. Yes, sir; he did.

Q. 39. Will you tell us whether he has been since that time a man of sound or unsound condition?

A. To the best of my knowledge, he has been a man of unsound condition.

Q. 40. Can you tell us what is understood in the family to have been the cause of your mother's separation from him?

A. He has been very cross and nasty—couldn't get along with him—that has been the cause of it.

Q. 41. In the family, is that crossness and irritableness regarded as one of the effects of his former intemperate habits, or not?

A. Yes, sir; it is.

Q. 42. Has he become afflicted with any form of nervous disease?

A. Yes, sir; he has.

Q. 43. What is it called in the family?

A. It is something similar to St. Vitus's dance.

Q. 44. From what you know of him, have you formed any opinion as to whether his impaired health has had any effect upon his memory? If so, what is your opinion and belief?

A. My belief is that it has affected his memory very much.

Cross-examined by Mr. Storrow, de bene esse.

Cross-Q. 45. Was Drawbaugh's talking-machine common talk in the neighborhood while you lived there?

Q. 23. Will you tell us whether or not Mr. Drawbaugh's talking-machine invention was talked about in his family and among his boarders, at the time when you lived in his family?

[*Objected to as leading.*]

A. Yes, sir; it was.

Q. 24. Did you hear them talking about it at that time, or not?

[*Same objection.*]

A. Yes, sir; I did.

Q. 25. Whom did you hear at that time talking of it in his family or among his boarders?

A. I heard his wife and his boarders all talk about it.

Q. 26. Will you state the names of his boarders whom you heard talk about it at that time?

A. Mr. Carns, Mr. Umberger, Mr. Egborn, and Mr. Schrader.

Q. 27. Are you positively sure that you heard Mr. Jacob Carns talk about it at that time when you lived in Mr. Drawbaugh's family and he boarded there?

A. Yes, sir; I am positively sure.

Q. 28. Do you remember whether it was talked about quite commonly in Mr. Drawbaugh's family—a good deal talked about there—or not?

[*Objected to as leading.*]

A. Yes, sir; it was.

Q. 29. Do you remember whether Mr. Drawbaugh's wife encouraged or opposed him in regard to his talking-machine invention, at that time while you lived there in the family?

[*Objected to as leading and calling for incompetent testimony.*]

A. She opposed him.

Q. 30. While you lived in Mr. Drawbaugh's family, did your father and his family live in Milltown?

A. Yes, sir; they did.

Q. 31. Were you in the habit of visiting your father's family frequently while you lived at Mr. Drawbaugh's?

A. Yes, sir; I was.

Q. 32. State whether or not Mr. Drawbaugh's talking-machine was a matter that was known and talked about in your father's family at that time while you lived at Mr. Drawbaugh's?

A. Yes, sir; it was.

Q. 33. Is your mother still living?

A. Yes, sir; she is.

Q. 34. Is she living with your father, or separated from him?

A. She is separated from him.

Q. 35. How long has she been separated from him?

A. Going on two years.

Q. 36. Do you know about what her age is?

A. Her age is about fifty-four.

Q. 37. When your father was living in Milltown up to the year 1870, when he moved away, was he a temperate or an intemperate man with regard to the drinking of intoxicating liquors?

A. He drank a great deal.

Q. 38. Did he drink so much as to seriously impair his bodily health and mental condition or not?

A. Yes, sir; he did.

Q. 39. Will you tell us whether he has been since that time a man of sound or unsound condition?

A. To the best of my knowledge, he has been a man of unsound condition.

Q. 40. Can you tell us what is understood in the family to have been the cause of your mother's separation from him?

A. He has been very cross and nasty—couldn't get along with him—that has been the cause of it.

Q. 41. In the family, is that crossness and irritableness regarded as one of the effects of his former intemperate habits, or not?

A. Yes, sir; it is.

Q. 42. Has he become afflicted with any form of nervous disease?

A. Yes, sir; he has.

Q. 43. What is it called in the family?

A. It is something similar to St. Vitus's dance.

Q. 44. From what you know of him, have you formed any opinion as to whether his impaired health has had any effect upon his memory? If so, what is your opinion and belief?

A. My belief is that it has affected his memory very much.

Cross-examined by Mr. Storrow, de bene esse.

Cross-Q. 45. Was Drawbaugh's talking-machine common talk in the neighborhood while you lived there?

Q. 23. Will you tell us whether or not Mr. Drawbaugh's talking-machine invention was talked about in his family and among his boarders, at the time when you lived in his family?

[*Objected to as leading.*]

A. Yes, sir; it was.

Q. 24. Did you hear them talking about it at that time, or not?

[*Same objection.*]

A. Yes, sir; I did.

Q. 25. Whom did you hear at that time talking of it in his family or among his boarders?

A. I heard his wife and his boarders all talk about it.

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A. Yes, sir; I am positively sure.

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[*Objected to as leading.*]

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[*Objected to as leading and calling for incompetent testimony.*]

A. She opposed him.

Q. 30. While you lived in Mr. Drawbaugh's family, did your father and his family live in Milltown?

A. Yes, sir; they did.

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A. She is separated from him.

Q. 35. How long has she been separated from him?

A. Going on two years.

Q. 36. Do you know about what her age is?

A. Her age is about fifty-four.

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A. To the best of my knowledge, he has been a man of unsound condition.

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A. He has been very cross and nasty—couldn't get along with him—that has been the cause of it.

Q. 41. In the family, is that crossness and irritableness regarded as one of the effects of his former intemperate habits, or not?

A. Yes, sir; it is.

Q. 42. Has he become afflicted with any form of nervous disease?

A. Yes, sir; he has.

Q. 43. What is it called in the family?

A. It is something similar to St. Vitus's dance.

Q. 44. From what you know of him, have you formed any opinion as to whether his impaired health has had any effect upon his memory? If so, what is your opinion and belief?

A. My belief is that it has affected his memory very much.

Cross-examined by Mr. Storrow, de bene esse.

Cross-Q. 45. Was Drawbaugh's talking-machine common talk in the neighborhood while you lived there?

A. Yes, sir; it was.

Cross-Q. 46. Where did you ever hear it talked of?

A. In his family and amongst the boarders.

Cross-Q. 47. Did you ever hear it talked of outside of his house?

A. It was talked about a great deal around there.

Cross-Q. 48. Where?

A. In Milltown.

Cross-Q. 49. Where, outside of his house, did you ever hear it talked about?

A. I heard it talked about in my parents' house; not any other where in particular.

Cross-Q. 50. What did you hear said about it?

A. I heard folks speak about it—that they thought it would be a great thing if he could get it accomplished.

Cross-Q. 51. You say you saw a talking-machine of his, or part of one; where was it?

A. In his shop.

Cross-Q. 52. Whereabouts in the shop—in what part of it?

A. In the office is where I saw it, I think.

Cross-Q. 53. Whereabouts in the office?

A. I couldn't recollect right whereabouts.

Cross-Q. 54. Was anybody doing anything with it when you saw it?

A. No, sir; not to my recollection.

Cross-Q. 55. Was that while you were working at Mr. Drawbaugh's?

A. Yes, sir; it was.

Cross-Q. 56. Who was with you at that time?

A. I couldn't just tell you exactly the persons—several ladies of Milltown.

Cross-Q. 57. Don't you remember any of them?

A. No, sir; I don't remember them right. We girls mostly generally went down there on Saturday afternoon still.

Cross-Q. 58. Tell me, as near as you can, any particular time when you heard his talking-machine talked of at his house.

A. During the time I lived with him in 1869, from March to August. I frequently heard it talked of, though, just going in and out when I wasn't employed in the family.

Cross-Q. 59. Do you remember any particular occasions when you heard it talked of?

A. No, sir; no particular occasion.

Cross-Q. 60. What else did you see at his shop at the time when you think you saw a talking-machine?

A. Nothing else, to my recollection.

Cross-Q. 61. What did you go down there for at that time?

A. We generally went down to see the machinery work, and have a little fun around there.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 30th day of October, 1883.

FRED. M. OTT, *Examiner.*

MRS. MARGARET BRENNEMAN.

MRS. MARY M. DARR, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

Q. 1. Are you the wife of William Darr, who testified on behalf of complainants in July, 1882, and whose deposition is printed in their record, pages 358 to 366?

A. Yes, sir.

Q. 2. Your husband testified that he formerly lived at Milltown for twenty years, and left on the 31st day of March, 1870. Does your recollection agree with that, or not?

[*Objected to as leading.*]

A. Yes, sir.

Q. 3. Your daughter, formerly Maggie Darr, now Maggie Brenneman, has testified this morning that she lived in the family of Daniel Drawbaugh in 1869. Do you remember the fact of her living in Mr. Drawbaugh's family?

A. Yes, sir.

Q. 4. Will you tell us whether she ever lived in Mr. Drawbaugh's family at any time before or after that, or not?

A. No, sir; not before nor after.

Q. 5. You have a daughter Jennie, have you not?

A. Yes, sir.

Q. 6. Did your daughter Jennie ever live in Mr. Daniel Drawbaugh's family? If so, when?

A. Yes, sir; she lived there in 1868.

Q. 7. Was that the only time she ever lived in Mr. Drawbaugh's family, or not?

A. Yes, sir; it was the only time.

Q. 8. Will you tell us whether you ever did or did not hear your daughter Maggie speak of Mr. Drawbaugh's talking-machine while she (Maggie) lived in Mr. Drawbaugh's family?

A. Yes, sir; I have heard her speak of it.

Q. 9. Did you ever hear your daughter Jennie speak of it, or not, while she (Jennie) lived in Mr. Drawbaugh's family?

A. Yes, sir.

Q. 10. Did you ever hear your husband, Mr. William Darr, while you lived at Milltown, say anything about Mr. Drawbaugh's talking to a distance, or mention the subject of talking to a distance?

A. Yes, sir.

Q. 11. Do you remember what your husband said about it at that time?

A. Yes, sir.

Q. 12. Will you state what it was, as you remember it?

A. He came in one day and said to me that Mr. Drawbaugh was speaking of making a telephone, or some sort of a talking-machine, that he could talk across the ocean with to other parts of the world; I don't remember just how he spoke it.

Q. 13. Did he tell you what he said to Mr. Drawbaugh? If so, what was that, as you remember it?

A. He told him that he had better invent something to talk across the Yellowbreeches first.

Q. 14. Was that conversation while your daughter Jennie lived with Mr. Drawbaugh, or before or after?

A. Before.

Q. 15. Can you tell us when that conversation was?

A. In 1866.

Q. 16. While you lived in Milltown, and before you moved away in the spring of 1870, was there any talk around among the neighbors in Milltown about Mr. Drawbaugh's talking-machine or not?

A. Yes, sir.

Q. 17. From your recollection, would you say that before you moved away from Milltown in 1870 Mr. Drawbaugh's talking-machine was generally known and talked about among the people at Milltown or not?

[*Objected to as leading.*]

A. Yes, sir; it was.

Recess until 2, P. M.

Examination resumed at 2 P. M.

Q. 18. Before you moved away from Milltown in 1870, was your husband, William Darr, a man of temperate or intemperate habits, so far as the drinking of intoxicating liquors is concerned?

A. Intemperate.

Q. 19. What effect, if any, did it have upon his bodily condition—his nervous system?

A. It affected his nerves, I think, a good bit.

Q. 20. Has his nervous system been out of order very much since that time or not?

[*Objected to as leading.*]

A. Yes, sir.

Q. 21. Is he a drinking man now?

A. No, sir.

Q. 22. How came he to stop drinking intoxicating liquors?

A. It was an injury to his nerves.

Q. 23. I have been informed that he was advised by his physician several years ago that if he didn't stop drinking intoxicating liquors they would cause his death; is my information correct, or not?

[*Objected to as leading.*]

A. Yes, sir.

Q. 24. Has his nervous condition improved or grown worse since he stopped drinking?

A. I was informed that he was something better than what he had been.

Q. 25. Do you live with him, or have you separated from him?

A. I have separated from him.

Q. 26. When did you separate from him?

A. A year and a half ago.

Q. 27. Why did you separate from him?

A. He was abusive.

Q. 28. Did he provide for you or fail to provide for you before you separated from him?

A. He failed to provide for me.

Q. 29. Have you had to make your own living since he failed to provide for you?

A. Yes, sir.

Q. 30. At the time when you separated from him, do you think his nervous condition was any worse or any better than it was when he stopped drinking?

A. I think it was rather worse.

Q. 31. What effect, if any, do you think the derangement of his nervous system has had upon his memory?

A. It has affected his memory.

Cross-examined by Mr. Howson:

Cross-Q. 32. Where are you now living?

A. At Highspire, Dauphin county.

Cross-Q. 33. With whom, if with any one?

A. George Brown.

Cross-Q. 34. I suppose while you were living in Milltown you heard talk of quite a number of things made by Mr. Drawbaugh—is that so?

A. Yes, sir.

Cross-Q. 35. Tell us what they were, or those which you recollect?

A. The first was a stave-cutter, a stave-jointer, a molasses faucet, clock, and telephone.

Cross-Q. 36. What kind of a clock was this of Mr. Drawbaugh's which you heard of while you were at Milltown?

A. That I never heard the name of that I can mind of—what the name of the clock was.

Cross-Q. 37. Well, tell us what you did hear about the clock while you were at Milltown.

[*Objected to by Mr. Hill as not inquired of in the examination-in-chief, and as hearsay and incompetent.*]

A. I just heard that he was making one, and had finished it and taken it out.

Cross-Q. 38. Had taken it out where to?

[*Same objection.*]

A. To Harrisburg.

Cross-Q. 39. What, if you know, had he taken it to Harrisburg for?

[*Same objection.*]

A. To show.

Cross-Q. 40. Was this told you by some particular person, or was it general talk at Milltown?

[*Same objection.*]

A. It was general talk.

Cross-Q. 41. Do you remember anything else made, or said to have been made, by Mr. Drawbaugh while you were at Milltown?

[*Same objection.*]

A. A molasses faucet was made while we were there.

Cross-Q. 42. This clock which you have mentioned was an electric clock, was it not?

[*Same objections, and further objected to that the witness has already testified that she does not know what they called it.*]

A. I can't remember the name of it.

Cross-Q. 43. Still, you quite clearly recollect that there was general talk about it at Milltown?

[*Same objection.*]

A. Yes, sir.

Cross-Q. 44. How long have you been living with Mr. Brown at Highspire?

A. Ten months.

Cross-Q. 45. Where did you live before that?

A. I was here in Harrisburg very nigh a year.

Cross-Q. 46. Whom were you living with in Harrisburg?

A. With different persons.

Cross-Q. 47. How many different persons, and who were they?

A. Three different persons: Maggie Brenneman, Mrs. Ross, and Mrs. Sadler.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 30th day of October, 1883.

FRED. M. OTT,
Examiner.

MARY A. DARR.

ALEXANDER UNDERWOOD, *being produced, sworn, and examined, saith:*

Examinnd by Mr. Hill:

My age is seventy; residence, Mechanicsburg, Cumberland county, Pennsylvania; I have no occupation except looking after my farm and some ore banks that I have.

Q. 1. When did Moses Evans move on to your farm near Dillsburg?

A. The 1st of April, 1875. At least that was the contract, but it seems to me that he moved a few days before that; I am not certain.

Q. 2. You have a large and handsome barn on that farm. When was that built?

A. It was built in 1875.

Cross-examination waived by Mr. Storrow.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 30th day of October, 1883.

FRED. M. OTT,
Examiner.

ALX. UNDERWOOD.

JOHN M. BRENNEMAN, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

My age is thirty-three; residence, 408 River avenue, Harrisburg, Pennsylvania; occupation, frog and crossing fitter.

Q. 1. Are you the husband of Mrs. Maggie Brenneman, who testified here in this case this forenoon?

A. Yes, sir.

Q. 2. Were you ever in Daniel Drawbaugh's shop at Milltown, or not?

A. No, sir.

Q. 3. It appears from your marriage certificate, produced here, that you were married to Maggie Darr on the 24th day of December, 1872. Before you were married were you ever in Milltown, except merely passing through without stopping?

A. No, sir; I drove through with Miss Maggie Darr, but we didn't stop.

Q. 4. In December, 1872, when you were married, where were Mr. William Darr, your wife's father, and his family living?

A. In Highspire, on a small farm belonging to Lawyer Mumma at that time.

Q. 5. Where did you live during the first year after your marriage? I mean, where did you live from the time of your marriage right along through the year 1873, or the greater part of it?

A. I lived with my father-in-law, William Darr, from 1872 till the spring of 1875.

Q. 6. Do you know Daniel Drawbaugh, of Eberly's Mills, Cumberland county, Pennsylvania; and if so, how long have you known him personally?

A. I have known him for a period of one month.

Q. 7. Did you ever hear of his talking-machines? If so, when and where and how did you first hear of them?

[*Objected to by Mr. Howson as new matter, not in rebuttal.*]

A. Shortly after my marriage, in 1873, I heard the Darr family and George Brown's wife speak of them—about him being smart and getting up different patents—a clock and this telephone.

[*Answer objected to by Mr. Howson as hearsay and not evidence.*]

Q. 8. What Darr family was that?

A. William Darr, my father-in-law.

Q. 9. About that time, did you hear it spoken of in the Darr family more than once, or only once?

[*Objected to as not in rebuttal, and as leading.*]

A. Oh, no; I heard it spoken of different times.

[*Answer objected to by Mr. Howson as hearsay and not evidence.*]

Cross-examination de bene esse by Mr Howson:

Cross-Q. 10. When and where did you make Mr. Drawbaugh's acquaintance?

A. At Paterson, N. J., about a month ago.

Cross-Q. 11. What were you doing at Paterson then?

A. I was working for the Atlantic and Pacific Tea Company.

Cross Q. 12. What, if you know, was Mr. Drawbaugh doing at Paterson at the time?

A. I suppose he was there to see me and my wife, as near as I know.

Cross-Q. 13. Were you then living at Paterson?

A. Yes, sir.

Cross-Q. 14. What is your permanent residence at the present time?

A. 408 River Avenue.

Cross-Q. 15. When did you move there from Paterson?

A. Last Friday a week.

Cross-Q. 16. How long had you been living at Paterson?

A. From some time in April last up to the time I came here.

Cross-Q. 17. How long was Mr. Drawbaugh with you and your wife when he visited you at Paterson?

A. The limited time of one hour.

Cross-Q. 18. During that time, I suppose, Mr. Drawbaugh and your wife and you were talking together.

A. No, sir; he came to my house and spoke to my wife first; I wasn't at home; then he came down to the tea store and spoke to me.

Cross-Q. 19. When did you leave your employment with the Atlantic and Pacific Tea Company?

A. Last Thursday a week.

Cross-Q. 20. And when did you enter into your present employment?

A. I haven't entered into any employment since I have been here.

Cross-Q. 21. When were you notified to attend here in this case, and by whom?

A. About one month ago, by Daniel Drawbaugh and Lawyer Jacobs.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 30th day of October, 1883.

FRED. M. OTT,
Examiner.

JOHN M. BRENNEMAN.

OCTOBER 31, 1883, 10 A. M.

Examination resumed, pursuant to adjournment.

Present, same counsel.

MILTON BASEHORE, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

My age is 26; residence, Hampden township, Cumberland county,

Pa.; my post-office address is Shiremanstown; my occupation is laboring.

Q. 1. Is Wilson Walters your uncle?

A. Yes, sir.

Q. 2. Did you ever work for him on his farm? If so, when?

A. Yes, sir; from 1873 to 1877.

Q. 3. Orlando Kahney was examined as a witness on behalf of the Bell Telephone Company, at Philadelphia, on January 2, 3, and 4, 1883, and testified, among other things, that he worked for Wilson Walters in 1873, 4, and 5; [see ans. 3, p. 990, ans. 38. p. 993, ans. 150, p. 1,004, ans. 157, 158, and 164, p. 1005, Compts. printed rebutting record]; do you remember the fact of his working there for your uncle, Wilson Walters, when you worked there?

A. Yes, sir.

Q. 4. Mr. Kahney testified, in his said answer 38, that he left Mr. Walters' employ in July, 1875; and he testified, in his said answer 157, that he worked for Mr. Walters up to about August, 1875, but was not positive about the date; can you tell us when Mr. Kahney stopped working for Mr. Walters?

A. I can't tell whether it was the last of August or beginning of September; it was somewheres along there.

Q. 5. Were you ever in Mr. Daniel Drawbaugh's shop, at Milltown, Cumberland county, Pa.? If so, how many times have you ever been in that shop in your life?

A. I was in once, and only once.

Q. 6. How did you happen to visit Mr. Drawbaugh's shop at that time—what was your business there?

A. We went there to grind cradle-scythes.

Q. 7. Who went there to grind cradle-scythes?

A. Orlando Kahney and myself.

Q. 8. How many cradle-scythes did you take there to grind at that time, if you remember?

A. Five, I think.

Q. 9. What were you about to do with the cradles when you got the scythes ground?

A. Commencing to cut oats.

Q. 10. Did the cradles belong to Mr. Wilson Walters, and were you about to cut Mr. Wilson Walters' oats?

A. Yes, sir.

AMERICAN BELL TELEPHONE COMPANY, -8

Q. 11. In what month does the oat harvest generally occur in Cumberland county?

A. In July.

Q. 12. How happened Mr. Orlando Kahney to have anything to do with the cradles—where was he working at that time?

A. At Mr. Walters'; we generally ground them; we either had to grind them with hand-power, or when the privilege was given to us, we took them down there and ground them with water-power.

Q. 13. Grinding cradles by hand-power is pretty hard work, I suppose, isn't it?

A. Yes, sir.

Q. 14. Was that during the time that Mr. Orlando Kahney worked for Mr. Wilson Walters, and before the oat harvest of 1875, or not?

A. It was during the time that he worked for Mr. Walters, and before the oat harvest of 1875.

Q. 15. When you got into Mr. Drawbaugh's shop with Mr. Kahney, at that time, did you grind the cradle-scythes there?

A. Yes, sir.

Q. 16. Do you remember whether Mr. Daniel Drawbaugh was about there in the shop while you were grinding the scythes there?

A. Yes, sir; he was in.

Q. 17. After you and Mr. Kahney had finished grinding the scythes there that day, did you go right away from the shop or did you remain there a little while?

A. We remained a short time.

Q. 18. If you remember anything in particular that took place while you and Mr. Kahney remained there after you had finished grinding the scythes, please tell us what it was that happened.

A. We looked at the machinery, and then we talked over what he called the talking-machine.

Q. 19. Who listened at the talking-machine while the talking was going on through it that day?

A. Orlando Kahney.

Q. 20. Where was Mr. Drawbaugh while Orlando Kahney was listening at the talking-machine?

A. He was some place else; I didn't see him.

Q. 21. As you were going home that day from Mr. Drawbaugh's shop to Mr. Wilson Walters' farm, did you have any conversation with

Mr. Orlando Kahney, your companion, with reference to Mr. Drawbaugh's talking-machine and what had been going on that day at the shop?

A. Yes, sir.

Q. 22. Please tell us so much of that conversation on your way home as you can remember.

A. He told me if I had been with him I would have heard this man Drawbaugh talk over a wire—he said it was—talk over a wire.

Q. 23. Tell us everything else that you and he said on the way home about it, and whether he told you where Mr. Drawbaugh was when he was talking to him over the wire; and if so, what he told you?

[*Question objected to as leading.*]

A. He told me Mr. Drawbaugh was at his house while he was talking over the wire.

Q. 24. Do you mean at Mr. Drawbaugh's house?

A. Yes, sir.

Q. 25. What did he mean by telling you that if you had been with him you would have heard Drawbaugh talk over a wire—were you not in the shop with him?

[*Objected to as calling for incompetent testimony, as leading, and as eminently suggestive under the circumstances.*]

A. Yes, sir; I was in the shop, but I wasn't close to him.

Q. 26. What were you doing while Mr. Drawbaugh was talking over a wire, and Mr. Kahney listening, that day?

[*Objected to because the question has already substantially been put, and because it is leading.*]

A. I was there; I had my mind turned towards the other machines; I was looking at them.

Q. 27. Do you remember what floor of the shop it was that the grind-stone stood upon, on which you ground the scythes that day?

A. No, sir.

Q. 28. Do you remember on what floor of the shop it was that you saw Mr. Kahney listening at the talking-machines that day?

A. No, sir; it was in a large room there, but I can't tell you on which floor it was.

Q. 29. From the conversation that you had with Mr. Kahney, as you and he were going home from Mr. Drawbaugh's shop that day, did you at that time form the impression that Mr. Kahney had known about

Mr. Drawbaugh's talking-machine before, or that it was something new to him which he had never before known about?

[*Objected to as calling for incompetent testimony, and because the subject has been exhausted by the previous answers.*]

A. I supposed he knew it before, the way he talked.

Q. 30. Do you at this time remember what he said that gave you the impression that he knew it before?

[*Same objection.*]

A. The way that he told me that the wire was from Drawbaugh's house to the office there or room that we were in.

Cross-examined by Mr. Storrow:

Cross-Q. 31. When did you first begin to work for your uncle, Wilson Walters?

A. In 1873, in April.

Cross-Q. 32. Whom did you next work for after leaving him?

A. My father.

Cross-Q. 33. When was that?

A. In 1878.

Cross-Q. 34. Did you work for your uncle, Wilson Walters, from the spring of 1873 to the spring of 1878?

A. The first two winters I went home to go to school, and then the next two winters I stayed at Mr. Walters'; I stayed at Mr. Walters' right along from the spring of 1873 till I left him in November, 1877, except that the first two winters I went home to go to school.

Cross-Q. 35. How long did you stay at Mr. Drawbaugh's shop after you got done grinding the scythes?

A. Not very long; I can't tell exactly the time.

Cross-Q. 36. Ten or fifteen minutes, or an hour?

A. I can hardly tell; I suppose we were there longer than ten or fifteen minutes.

Cross-Q. 37. But it lies in your mind that it was quite a short time, does it?

A. It wasn't very long, or I didn't think it was, anyhow, at the time.

Cross-Q. 38. Tell me everything else that you remember about that visit.

A. I seen turning-lathes standing there on the floor, and I seen axles —he had been working at axles, too; that is about all that I remember of.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 31st day of October, 1883.

FRED. M. OTT,
Examiner.

MILTON A. BASEHORE.

WILSON P. WALTERS, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

My age is forty-seven; residence, Camp Hill, Cumberland county, Pennsylvania; occupation, farming.

Q. 1. Mr. Orlando Kahney and Mr. Milton Basehore have both testified in this case that they worked on your farm at one time. Is such the fact?

A. Yes, sir.

Q. 2. Have you any account-book of original entries that will enable you to fix the time when Mr. Basehore first commenced working for you on your farm, and when he quit working finally for you?

A. Yes, sir; here it is.

Q. 4. When does that book show that Mr. Basehore commenced working for you?

A. He commenced April 1, 1873. He quit November 4, 1877.

Q. 5. Did he work for you or go to school the first two winters?

A. He was with me five summers, and the first two or three winters he went home to go to school. The other winters he did as the other boys did—worked for me for his board and washing and mending. The last two winters prior to his finally leaving me he stayed with me on the farm.

Q. 6. When does your book show that Mr. Orlando Kahney commenced working for you?

A. Here is something I can't just start on right. I have thought of something besides this. He commenced working for me for wages April 1, 1872, but he stayed with me the previous winter for his board; and, as I gave him no wages, I have no account of that in the book. He quit working for me September 11, 1875. The book shows his work beginning April 1, 1872, and ending September 11, 1875.

Q. 7. Will you state any circumstance connected with his leaving you September 11, 1875, that impressed itself on your memory?

A.. No; I cannot.

Q. 8. At the time when he left you September 11, 1875, how did your accounts stand?

A. He was owing me eleven dollars when he left.

Q. 9. Does the book show that fact?

A. Yes, sir.

Q. 10. State whether or not he has ever paid it, or any part of it.

A. No, sir; he has never paid any part of it.

Cross-examination waived by Mr. Storrow.

Examination taken, reduced to writing, and by the witness affirmed and subscribed to before me, this 31st day of October, 1883.

FRED. M. OTT,
Examiner.

W. P. WALTERS.

WILLIAM H. ZEARING *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

My age is forty-one; my post-office is Shiremanstown, Cumberland county, Pa.; occupation, farming.

Q. 1. Are you the secretary of the school-board for Lower Allen township?

A. I am.

Q. 2. How long have you held that office?

A. Since 1879.

Q. 3. Are you acquainted with Daniel Drawbaugh, of Eberly's Mills, Cumberland county, Pa.? If so, how long have you known him?

A. I am; I have known him for the past twenty years.

Q. 4. How long have you lived near Shiremanstown?

A. Thirty-five years.

Q. 5. A witness named Jacob Carns was examined on behalf of complainants in this case at Philadelphia, in December, 1882, and his deposition is printed in complainants' rebutting record, pp. 883 to 924, inclusive. He testified, among other things, that he was thirty-two years old; a machinist, now residing in Akron, Ohio, and that he worked for the Drawbaugh Manufacturing Company, at Eberly's Mills,

Cumberland county, Pa., beginning on August 10, 1868, and ending on February 4, 1871, there being some intervals of time between August, 1868, and February, 1871, in which he did not work, and that one of the intervals was from August 7, 1869, to October 11, 1869, during which two months, from August 7 to October 11, 1869, he was in Shiremanstown, not doing anything in particular part of the time, but stayed with his nephew, George Eichelberger, on the Haldeman farm; state whether or not you are personally acquainted with that Jacob Carns.

A. I am.

Q. 6. How long have you known him?

A. I have known him ever since the war closed—the time he moved to Shiremanstown.

Q. 7. How well have you known him?

A. I met him almost daily, you might say; that is, when he was at home.

Q. 8. Did you ever get a pair of steelyards repaired in any way? If so, whom did you get to repair them?

A. I did; I got Daniel Drawbaugh to repair them.

Q. 9. What was the nature of the repairs which he did on them?

A. Re-lettering and filing the notches. The notches had become very dull and the letters were faint, and I got him to brighten them.

Q. 10. How many times did you ever have occasion to get Mr. Drawbaugh to file and re-letter a pair of steelyards?

A. I was there on two occasions; I took them there and Mr. Drawbaugh looked over them and said he would re-letter them, and that I should call in the course of a week or two and he would have them finished.

Q. 11. Was that the only time that you ever had a pair of steelyards re-lettered at Mr. Drawbaugh's shop or not?

A. It was.

Q. 12. When you took them there to get them re-lettered, Mr. Drawbaugh told you to call again and get them in a week or two, and did you call yourself and get them in a week or two, or did you send somebody else to get them?

A. I called myself.

Q. 13 Have you any means of fixing the date when you called at Mr. Drawbaugh's shop and got those steelyards which he had just re-lettered and re-filed for you?

A. As the steelyards belonged to Mr. S. N. Bitner, I paid the same and charged him in a book account which I kept.

Q. 14. Do you mean that you paid Mr. Drawbaugh for repairing them?

A. Yes, sir.

Q. 15. Have you the book here in which you made the entry of that charge at that time?

A. I have.

Q. 16. Will you please produce it and point out the charge?

A. Here it is; the date is November 25, 1873.

Respondents' counsel requests the examiner to copy from the page referred to by the witness the charge referred to by him, together with the two charges last preceding it and the date. The examiner certifies that they are as follows:

"1873			
Nov.	18	to Cash	311 00
"	20	"	125 00
"	25	For relettering steel yards per (D. Drawbaugh)	35"

Q. 17. Is this charge, which the examiner has just copied from your book, in your own hand-writing in the book, or not?

A. It is my own hand-writing.

Q. 18. Is the book a book of original entries?

A. It is.

Q. 19. When did you enter in the book this charge "for relettering steelyards, per D. Drawbaugh, 35 cents."

A. On the day that I received them.

Q. 20. Please look at the book and give us the day, if you can, when you entered the charge on the book.

A. November 25, 1873.

Q. 21. In whose custody has the book been from that time to the present?

A. In my own.

Q. 22. I understand you that you were at Mr. Drawbaugh's shop and got the steelyards on November 25, 1873, the day of the charge; am I correct?

A. You are.

Q. 23. Will you tell me whether Mr. Drawbaugh did, or did not, on

that day, November 25, 1873, show you any instruments, machines, or inventions, and if so, please state what?

A. He showed me the skeleton of a clock, and a motor, as I called it—I don't know whether that was the right name for it or not—and amongst others, what he called a talking-machine.

Q. 24. Will you also tell me whether that was or was not the first time that Mr. Drawbaugh had ever showed you a talking-machine, or talked to you about such a machine?

A. It was not.

Q. 25. Had he showed you one before that or only told you about it?

A. He had showed me one.

Q. 26. Tell us, as near as you can, about how long prior to Nov. 25, 1873, Mr. Drawbaugh had first shown you a talking-machine.

A. If my memory serves me right, it was several years prior; it was at the time that Jacob Carns was working at the shop.

Q. 27. When Mr. Drawbaugh, for the first time, showed you a talking-machine, was anybody, besides you and Mr. Daniel Drawbaugh, present in the same room while he was showing it to you, or not?

A. I do not remember of anybody being present right in the same room.

Q. 28. Then tell us whether anybody was present at the time in the shop, and if so, who?

A. Jacob Carns, and George and Hiram Drawbaugh.

Q. 29. Did you ever have any conversation with Mr. Jacob Carns about Daniel Drawbaugh's talking-machine? If so, when and where?

A. Shortly after I had seen it the first time I met him about Shiremanstown and spoke to him as regards to this talking-machine. I considered it rather of a humbug, and I asked him his opinion of it; he expressed himself as I did about it, and didn't seem to think it would prove a success.

Recess until 2:30 P. M.

Examination resumed at 2:30 P. M.

The deposition of Wilson P. Walters, hereinbefore printed, was taken at this session, after which the examination was adjourned until November 1, 1883, at 10 A. M.

November 1, 1883, 10 *A. M.*

Examination resumed pursuant to adjournment. Present, same counsel.

Examination of William H. Zearing by Mr. Hill continued:

Q. 30. When Mr. Drawbaugh showed you a talking-machine at the time that Jacob Carns and Hiram Drawbaugh were present in the shop, did Mr. Drawbaugh talk to you through it, or did you talk to anybody through it?

A. He did not at that time.

Q. 31. You seem, if I can judge from your 29th answer, to have entertained the opinion about that time that Mr. Drawbaugh's talking-machine was a humbug. When he first showed it to you at the time when Jacob Carns was working in the shop, did you express any such opinion to Mr. Drawbaugh himself, or not?

[*Objected to as leading.*]

A. I did; yes, sir.

Q. 32. What did Mr. Drawbaugh say when you expressed that opinion to him at that time?

[*Objected to as incompetent.*[

A. If my memory serves me aright, he said it would prove in the future that it was not a humbug, or words to that effect; I don't know that I can just give his words for it.

Q. 33. When he showed you the talking-machines on the 25th day of November, 1873, did he or did he not at that time talk to you by means of the machine?

A. He did.

Q. 34. Where did you listen at the machine—I mean in what part of the shop—on that day, November 25, 1873?

A. At the north-east corner of the building, in a room.

Q. 35. On what floor?

A. I term it the third floor, counting the basement as the first floor.

Q. 36. Where did Mr. Drawbaugh go to do the talking through the machine on that occasion?

A. I can't tell you where he went; he went out of the room; I suppose he went down stairs; I heard him going down stairs.

Q. 37. When he talked to you, by means of the machine, on that occasion, did you hear and understand what he said, or not?

A. I did. Part of the conversation that I remember was, "The steelyards are finished."

Q. 38. Did you hear those words, "The steelyards are finished," come through the talking-machine, or did you overhear Mr. Drawbaugh's voice coming through the air without the aid of the talking-machine?

A. I supposed it to be from the talking-machine. As the door was closed, I don't think I could have heard Mr. Drawbaugh through the air.

Q. 39. After you yourself had heard and understood words and sentences coming through the talking-machine, what then did you think about Mr. Drawbaugh's invention being a humbug?

A. I changed my opinion. I thought probably it might be a success instead of a humbug, as I had at first expressed myself.

Q. 40. At that time, November 25, 1873, did you and Mr. Drawbaugh have any conversation about the humbug opinion which you had formerly entertained? If so, what was that conversation, so far as you remember it?

A. If my memory serves me right, I told him I believed his undertaking would prove a success instead of a failure, as I had expressed myself the first time.

Q. 41. On either the first or second occasions when he showed you the talking-machine, did Mr. Drawbaugh state to you how far, or to what places, he thought he could talk so as to be heard by means of his machine?

[*Objected to as incompetent.*]

A. On the second occasion he said he believed he could talk to people in New York city, and even further.

Q. 42. Will you please look at the machines "A," "B," "C," "F," and "I," which will be now placed on the table before you, and state whether you do or do not recognize any of them as the machines which Mr. Drawbaugh showed to you on the first and second occasions when he exhibited his talking-machines to you; and if you recognize any of them, state which ones you saw on the first occasion, and which on the second occasion?

A. This one [indicating "B"] looks to me like the one I saw on the first occasion, and this one, [indicating "I"] looks like the one I saw on the second.

Q. 43. When you listened at the talking-machine on the 25th of November, 1873, and Mr. Drawbaugh went off somewhere to talk to you through the apparatus, did he, that day, show you the instrument into which he did the talking?

A. I can't remember whether he made an exhibition of it that day or not—that is, after he did the talking; he showed it to me before he did the talking.

Q. 44. State whether or not you have ever seen Mr. Drawbaugh's talking-machines at his shop since the 25th day of November, 1873.

A. It is altogether likely I have, as I was there a number of times after the 25th.

Q. 45. Have you, or have you not, any distinct recollection of seeing them there since that day?

A. Looking over it, if my memory serves me right, I think I was there in May, 1877; I was there several years after that, anyhow.

Q. 46. You have stated that the first occasion when you saw Mr. Drawbaugh's talking-machine at his shop was when Jacob Carns was working there in the shop, and that shortly after that you had a conversation with Mr. Jacob Carns about Mr. Drawbaugh's talking-machine; will you tell us whether or not Mr. Drawbaugh's talking-machine invention at about that time was a thing generally known and talked about in the community?

[*Objected to as not in rebuttal.*]

A. It was.

Q. 47. Will you tell us whether, from that time down to the present time, Mr. Drawbaugh's talking-machine has or has not continued to be generally known and talked about in the community?

[*Same objection.*]

A. It has.

Q. 48. You have stated that you are, and for several years have been, secretary of the school-board in your township; have you also been during the same period a member of the school-board yourself?

A. Yes, sir; I have.

Q. 49. Mr. John C. Comfort has been for some time past employed as an agent or assistant in the gathering of testimony by the counsel of the Bell Telephone Company in this case. Are you acquainted with him?

A. I am.

Q. 50. Did you have any conversation with him day before yesterday?

A. I did.

Q. 51. Did he ask you in that conversation to do anything, or not to do anything, for the counsel who represent Mr. Drawbaugh's side of the case? If so, tell us what he said.

A. He asked me what brought me here. I told him I was here on some business, and was on my way to Carlisle. He said I had better not be here, or made a remark to that effect, or something of that kind. He made a remark—William D. Shoop was present or near by there—that he thought I was in pretty bad company. He said if my services were needed I could do more good across the river. I told him I expected to go there that evening, or something to that effect. That is about the conversation.

Q. 52. Was that conversation on the Cumberland side of the river?

A. No, sir.

Q. 53. I have been informed that in that conversation he requested you not to look up your books or dates for us. Is my information correct, or not?

A. It is not.

[*Mr. Storrow objects to each and every question and answer as not in rebuttal.*]

Cross-examination, de bene esse, by Mr. Howson:

Cross-Q. 54. I understand from your testimony that at the time you heard Mr. Drawbaugh say to you through the talking-machine, as you supposed, "The steelyards are finished," you also heard other talk. Is that correct?

A. It is.

Cross-Q. 55. You heard quite considerable more talk. Is that correct?

A. I have no recollection of any conversation particularly, more than my memory about the steelyards.

Cross-Q. 56. But I understand you to be clear in your recollection that there was more talk. Are you not equally clear whether there was a good deal more, or only a little more?

A. I am not; I do not remember definitely about that.

Cross-Q. 57. I suppose you recollect that you heard what other talk there was quite clearly?

A. Whatever talk there was I heard as distinctly as I did about the steelyards. As to what it was I can't say.

Cross-Q. 58. Whereabouts in the room was the thing at which you listened?

A. If my memory serves me right, it was lying on a little table that was in the room.

Cross-Q. 59. Whereabouts on that table was it?—the middle of the table, or near one of the ends of the table, or what is your recollection on that subject?

A. I think it was near the center, if I remember rightly.

Cross-Q. 60. Whereabouts in the room was that table?

A. If I remember right, it was standing at the side of the room.

Cross-Q. 61. Which side of the room—if you recollect—the side near the door, or away from the door?

A. I think it was rather behind the door.

Cross-Q. 62. What is your recollection as to the size of the room?

A. It was rather a small room; I guess was about 10×12, or something of that size.

Cross-Q. 63. Whereabouts in the room were you standing when you heard Mr. Drawbaugh say, "The steelyards are finished?"

A. I was near the table.

Cross-Q. 64. How near, about?

A. I was quite close. I was sitting about as close to the table as I could sit.

Cross-Q. 65. Are we to understand now, then, that you were sitting and not standing?

A. I was sitting when Mr. Drawbaugh went out; afterwards I stood.

Cross-Q. 66. My question refers to the time when you heard the words, "The steelyards are finished." Will you please answer it with that understanding?

A. If my memory serves me right, I was standing at the time.

Cross-Q. 67. And where?

A. Beside the table.

Cross-Q. 68. About how near?

A. I was quite close.

Cross-Q. 69. Were the words which you have given us in your examination-in-chief the first words which you heard through the machine as you supposed?

A. If I remember right, I think he had a date—that is, the month, and day, and year.

Cross-Q. 70. I understand you to say that while this was going on and you heard these words, the machine was lying near the middle of a table in the room which you have spoken of; is that correct?

A. It is; to the best of my recollection.

Cross-Q. 71. Did you go directly into this room when you entered the shop that day?

A. I think not.

Cross-Q. 72. When you left the steelyards to be repaired as you have stated, how long did you wait before calling for them?

A. I think a week or two.

Cross-Q. 73. You cannot state more definitely than that?

A. I cannot, to my recollection.

Cross-Q. 74. When you left the order, did you ask Mr. Drawbaugh how much the job would cost?

A. As he told me it wouldn't cost a great deal, I did not ask him how much it would be.

Cross-Q. 75. Did Mr. Drawbaugh explain why it would take one or two weeks to do so small a job?

A. He said he would have to do it after night, as he had other work promised.

Cross-Q. 76. Did he say why it would take a week or two of night work?

[*Objected to as assuming that he said it would take a week or two of night work, of which there is no evidence.*]

A. He did not say anything about the time it would take; he said I had better not call for a week or two, as he might not have them finished.

Cross-Q. 77. The understanding which you got from Mr. Drawbaugh, then, was, that he was so busy with other jobs promised at this time that he would be able to give to your little job only such time as he would be able to find at night within a week or two: is that about it?

[*Objected to as incompetent.*]

A. I didn't understand him that way; I took it from his conversation that he had other work promised which was the reason that I shouldn't call for a week or two, as he would work at the steelyards at his leisure.

Cross-Q. 78. And his leisure, under the circumstances, would be only at night?

A. Whatever talk there was I heard as distinctly as I did about the steelyards. As to what it was I can't say.

Cross-Q. 58. Whereabouts in the room was the thing at which you listened?

A. If my memory serves me right, it was lying on a little table that was in the room.

Cross-Q. 59. Whereabouts on that table was it?—the middle of the table, or near one of the ends of the table, or what is your recollection on that subject?

A. I think it was near the center, if I remember rightly.

Cross-Q. 60. Whereabouts in the room was that table?

A. If I remember right, it was standing at the side of the room.

Cross-Q. 61. Which side of the room—if you recollect—the side near the door, or away from the door?

A. I think it was rather behind the door.

Cross-Q. 62. What is your recollection as to the size of the room?

A. It was rather a small room; I guess was about 10×12, or something of that size.

Cross-Q. 63. Whereabouts in the room were you standing when you heard Mr. Drawbaugh say, "The steelyards are finished?"

A. I was near the table.

Cross-Q. 64. How near, about?

A. I was quite close. I was sitting about as close to the table as I could sit.

Cross-Q. 65. Are we to understand now, then, that you were sitting and not standing?

A. I was sitting when Mr. Drawbaugh went out; afterwards I stood.

Cross-Q. 66. My question refers to the time when you heard the words, "The steelyards are finished." Will you please answer it with that understanding?

A. If my memory serves me right, I was standing at the time.

Cross-Q. 67. And where?

A. Beside the table.

Cross-Q. 68. About how near?

A. I was quite close.

Cross-Q. 69. Were the words which you have given us in your examination-in-chief the first words which you heard through the machine as you supposed?

A. If I remember right, I think he had a date—that is, the month, and day, and year.

Cross-Q. 70. I understand you to say that while this was going on and you heard these words, the machine was lying near the middle of a table in the room which you have spoken of; is that correct?

A. It is; to the best of my recollection.

Cross-Q. 71. Did you go directly into this room when you entered the shop that day?

A. I think not.

Cross-Q. 72. When you left the steelyards to be repaired as you have stated, how long did you wait before calling for them?

A. I think a week or two.

Cross-Q. 73. You cannot state more definitely than that?

A. I cannot, to my recollection.

Cross-Q. 74. When you left the order, did you ask Mr. Drawbaugh how much the job would cost?

A. As he told me it wouldn't cost a great deal, I did not ask him how much it would be.

Cross-Q. 75. Did Mr. Drawbaugh explain why it would take one or two weeks to do so small a job?

A. He said he would have to do it after night, as he had other work promised.

Cross-Q. 76. Did he say why it would take a week or two of night work?

[*Objected to as assuming that he said it would take a week or two of night work, of which there is no evidence.*]

A. He did not say anything about the time it would take; he said I had better not call for a week or two, as he might not have them finished.

Cross-Q. 77. The understanding which you got from Mr. Drawbaugh, then, was, that he was so busy with other jobs promised at this time that he would be able to give to your little job only such time as he would be able to find at night within a week or two; is that about it?

[*Objected to as incompetent.*]

A. I didn't understand him that way; I took it from his conversation that he had other work promised which was the reason that I shouldn't call for a week or two, as he would work at the steelyards at his leisure.

Cross-Q. 78. And his leisure, under the circumstances, would be only at night?

A. From what he told me I took it to be that at the time; I understood him so.

Cross-Q. 79. Are the entries in the account-book which you have produced here, and from which you have read an entry of Nov. 25, 1873, all or for the most part in your hand-writing?

A. The majority of the entries in the book are in mine.

Cross-Q. 80. Those which are not in your hand-writing were made by whom?

A. I think my father is the only one who did any writing in the book except myself, as near as I can recollect; I don't recollect of any one writ. in it except him.

Cross-Q. 81. Will you please indicate any entry in the book which you recognize as being in your father's hand-writing?

A. This is one in my father's hand-writing.

[*Witness here refers to an entry appearing on page 6 of the book, under the name "David McGary." The entry on the third line of the page reading as follows: "June 25, by a grass-scythe* 1.50.]

Cross-Q. 82. Please fix a little more precisely, if you can, the time when you visited Mr. Drawbaugh's shop and saw there Jacob Carns and George and Hiram Drawbaugh.

A. I couldn't give any date to that; I am positive it was several years prior to the time I had the steelyards repaired.

Cross-Q. 83. You have told us that at the time you heard Mr. Drawbaugh say "The steelyards are finished," the machine was lying on a table near the middle, and you were standing by the table; how near, as far as your recollection serves you, was your ear to the machine?

A. I was close to the table as I could be, if my memory serves me right, and was close to the machine.

Cross-Q. 84. How long were you listening that day at the machine?

A. It might have been five minutes; I don't remember exactly the time.

Cross-Q. 85. How long were you in the shop?

A. I might have been there an hour or more.

Cross-Q. 86. Who else was there, if you recollect, besides Mr. Drawbaugh and yourself?

A. At present I don't remember who was there.

Cross-Q. 87. Do you recollect how long you were there when you went to order the repairs to the steelyards?

A. I think I was there an hour or more.

Cross-Q. 88. Who, if anyone, do you recollect meeting there on that occasion?

A. At present, I only remember J. B. Drawbaugh as being there.

Cross-Q. 89. In your answer to question 23, you mention what you call a motor, which you say you saw at Mr. Drawbaugh's shop; what sort of a thing was that?

A. I gave it that name; I don't know whether it was right or not; it was something in the nature of a little engine.

Cross-Q. 90. Please describe the thing a little more particularly.

A. If I remember rightly, it was something about eighteen inches in height; it was something like an engine; it is hard to remember; I don't remember much about it; I remember seeing it.

Cross-Q. 91. Don't you have any recollection as to how it operated or was intended to operate?

A. I have not.

Cross-Q. 92. I understand that you have been secretary of the Lower Allen school-district since 1879; that being the case, the books and records belonging to that district have been in your possession; is that so?

A. Yes, sir.

Cross-Q. 93. And among those books and records thus in your possession, is one containing the minutes of meetings of the school-board during the years 1874 and 1875; is that right?

[*Objected to as new matter not in any way referred to in the examination-in-chief.*]

A. Yes, sir.

Cross-Q. 94. You are acquainted with one Daniel A. Hamacher, formerly a school-teacher at Cedar Run school-house, in your district?

[*Same objection.*]

A. I am.

Cross-Q. 95. Do you remember Mr. Hamacher telling you that he was, or was to be, a witness in this case, and asking you to let him look at the books and records in your possession?

[*Same objection.*]

A. I do.

Cross-Q. 96. Mr. Hamacher told you, did he not, that he was testifying in the case at that time, and wanted to look at those books?

[*Same objection, and further objected to as leading, calling for hearsay, and incompetent.*]

A. I understood him to say that he was.

Cross-Q. 97. What books and records did Mr. Hamacher look at on that occasion?

[*Same objection as to question* 93.]

A. The report-books belonging to Nos. 2 and 3 schools, and also the minute-book.

Cross-Q. 98. And after looking at the report-books, and also the minute-books, Mr. Hamacher borrowed from you, and took away with him, a report-book; is that correct?

[*Same objection, and further objected to as leading.*]

A. It is.

Cross-Q. 99. He borrowed and took away with him one book only, I suppose.

[*Same objection.*]

A. He did.

Cross-Q. 100. You have mentioned the visit made to Mr. Drawbaugh's place in May, 1877; what was the occasion of that visit, and how do you fix it?

A. I think I had gone there to collect some money.

Cross-Q. 101. For what?

A. Money that was owed to me by 'Squire J. B. Drawbaugh for some service that I had done that he was to recompense me for; I don't know what the nature of it was; it was only a trifle.

Cross-Q. 102. In your 51st question and answer you were asked about some remarks that passed between you and Mr. Comfort, and in your answer you spoke of Mr. William D. Shoop. There was a William D. Shoop who testified for the defendants, page 484, and stated that he was 67 years old, and was born and lived near Shiremanstown. That is the same person you referred to in your answer, is it not?

A. Yes, sir.

Cross-Q. 103. While you have been here in Harrisburg waiting to testify you have met Mr. Shoop at Mr. Jacobs' office, have you not?

A. I have.

Cross-Q. 104. He has been employed to assist the counsel for defendants in hunting up witnesses, has he not?

A. I am not able to say if he is employed in that capacity or not.

Cross-Q. 105. He came to see you, didn't he?

A. No, sir.

Cross-Q. 106. He is a man who is an intemperate drinker at times, isn't he? That is his general reputation, is it not?

[*Objected to as new matter not referred to in the examination-in-chief, and as leading, irrelevant, immaterial, and otherwise incompetent.*]

A. It had been years ago, but for the present I couldn't say that.

Cross-Q. 107. Is he a married man?

A. He had been; he has been divorced; at least I have been told so; they are not living together.

Cross-Q. 108. Whom does he live with now?

A. I think he has his home with Mrs. Zimmerman, a widow lady.

Cross-Q. 109. Where does he live?

A. When at home he lives in what is called Frogtown; this woman with whom he has his home lives there.

Cross-Q. 110. He has been complained of by people in the neighborhood as having a disorderly house, has he not?

[*Objected to as calling for hearsay, and as leading, and as calling for new matter not referred to in the examination-in-chief, and also as immaterial and irrelevant.*]

A. Nothing of that kind has ever been told me.

Examination taken, reduced to writing, and by the witness affirmed and subscribed to before me, this 1st day of November, 1883.

FRED. M. OTT, *Examiner.*

W. H. ZEARING.

Witness recalled by Mr. Storrow.

Q. 1. Since signing your deposition you have made a statement in the presence of counsel for both parties, and of the examiner, about your conversation with Mr. Comfort; I wish you would repeat it.

A. Mr. Comfort and I are personally acquainted, and often talk together in a jesting way; and that was the drift of that conversation. It took place on the street.

W. H. ZEARING.

Subscribed to before me this 1st day of November, 1883.

FRED. M. OTT, *Examiner.*

Recess until 2:30 P. M.

Examination resumed at 2:30 P. M.

MICHAEL H. NATCHER, *being produced, affirmed, and examined, saith:*

Examined by Mr. Jacobs:

Q. 1. You have been heretofore a witness in this case on the part of

AMERICAN BELL TELEPHONE COMPANY, -8

the complainants, and testified on the 27th day of July, 1882; is that not correct?

A. Yes, sir.

Q. 2. You then testified [see complainants' printed record, pp. 510 and 511] that you "did work for your father at Eberly's Mills while he ran the mill as tenant to Beetem & Eberly, in 1870;" and also that you did work for your "father in the mill while he ran the mill for Mr. Leonard in 1871–2;" is that your present recollection?

A. Yes, sir.

Q. 3. During the course of your deposition you were asked to look at the four instruments produced before you, marked "B," "F," "C," and "I," and also an instrument marked "C reproduced," and were further asked whether you had ever seen said instruments, or either of them, at Eberly's Mills; to which you answered that you never saw anything like that to your knowledge. I observe, however, that you were not asked whether, whilst you resided at Eberly's Mills and worked for your father in the years mentioned, you had ever heard that Daniel Drawbaugh had at his shop an invention which he called, or which was called by others, a talking-machine; I now ask you that question, viz: Whether whilst you resided at Eberly's Mills in the years mentioned, you heard that Daniel Drawbaugh had an invention called a talking-machine?

[*Complainants' counsel objects to the insinuation contained in the question, that he deliberately refrained from asking the question referred to, and calls attention to the fact that the defendants' counsel declined to cross-examine.*]

A. I heard that he had, but I had never seen it.

Q. 4. When did you first hear that he had a talking-machine? Was it whilst your father was running the mill for Beetem & Eberly in 1870, or whilst he was running the mill for Mr. Leonard in 1871–2?

[*Objected to as leading.*]

A. It was while he was running it for Mr. Leonard.

Q. 5. Whom did you hear speak about the Drawbaugh talking-machine?

A. I heard my brother, George Natcher, and my sister, Bella Natcher, and my mother, and Mr. Leonard.

Q. 6. State whether or not you heard the persons named speak of it

whilst you were living at Eberly's Mills, and your father was running the mill in 1872 or prior.

A. Yes, sir.

Q. 7. If you remember, will you state what your brother George said about it at that time?

[*Objected to as calling for incompetent testimony.*]

A. He was down at the shop and he came up to the mill and told me he talked through the talking-machine from the lower story to the upper story, down at Mr. Drawbaugh's shop.

Q. 8. Can you remember what your sister said about it at that time?

[*Same objection.*]

A. Her and a couple of other little girls were down to the shop and Mr. Hiram Drawbaugh was there; and my sister saw this thing up against the wall and she asked him what that was; and he said it was to talk through. And she asked him to lift her up—it was pretty high—and whether she darst talk through it; and he did so.

Q. 9. I understand you to mean that she told you this whilst you lived and worked for your father at Eberly's Mills; am I correct?

A. Yes, sir.

Q. 10. Who first came to see you with regard to your knowledge of Drawbaugh's talking-machine?

A. Mr. Storrow.

Q. 11. How long before you were called to testify for the complainants was that?

A. I can't just say the time of year, but it was some time in the spring or along there; I don't just remember.

Q. 12. Will you state whether or not you then told him that you had heard of Drawbaugh's talking-machine whilst you lived at Eberly's Mills and your father ran the mill there?

A. I told him I had heard of them, but I had never seen them.

Q. 13. I understand that at the time of that visit you told Mr. Storrow that you had heard of Drawbaugh's talking-machine whilst you lived at Eberly's Mills in 1872, or prior. Is that correct?

A. Yes, sir; that is what I told him the time he was down.

Q. 14. You have spoken of your brother and sister and Mr. Leonard speaking to you of the talking-machines at the time you lived at Eberly's Mills. I wish to ask you whether or not the talking-machine was spoken of by others in the community at that time?

[*Same objection as to question 7.*]

A. Not more than Mr. Leonard. He said that Mr. Drawbaugh had a talking-machine, and we ought to have one in the mill, to the house.

Q. 15. Did Mr. Drawbaugh ever say anything to you about his talking-machines whilst you live there?

[*Same objection.*]

A. He told me that he had a machine invented that he could talk over the ocean, and I said that was a pretty big thing. I was busy at the time, and didn't say no more to him about it, nor him to me.

Cross-examined by Mr. Storrow, de bene esse:

Cross-Q. 16. Do you remember that when I came to see you about this case you were loading hay in the barn, and at my request got down off the load and talked to me a considerable time about your recollections?

A. Yes, sir.

Cross-Q. 17. That I may refresh your recollection of what you said to me at that time, I shall state to you that within a few hours after the conversation I made a written memorandum of it, and in that memorandum I find the following: "Never saw a telephone, and never heard of Dan's telephone till he heard he had a suit about one, a year or two ago." Don't you now remember that you made to me substantially that statement?

A. I said that I never saw the telephone, but I heard of a suit about it.

Cross-Q. 18. I have a further memorandum that "Mr. Natcher says that if he had known of a talking-machine there, he certainly would have remembered it." Don't you remember that you made to me substantially that statement?

A. I said if Mr. Drawbaugh would have had one there he never showed it to me. I never seen it; and he showed me a heap of other things.

Cross-Q. 19. You have not answered my question and I wish you to answer it; the examiner will read it to you again.

A. I told him if there had been a talking-machine there I would have remembered of it.

Cross-Q. 20. You have not answered my 17th question; please answer it; the examiner will read it to you.

A. I told you that I never seen any there, and Mr. Drawbaugh would

have showed it to me, and that I heard he had a suit about it. That is about all I can remember.

Cross-Q. 21. Is that all you can remember of saying to me?

A. That is all I can remember; that I never seen one, and that he showed me so many things and never showed me that.

Cross-Q. 22. You have not answered my question. I again ask you whether it isn't true that you told me that you never saw his telephone, and never heard that he had one till you heard that he had a suit about one?

A. I don't remember that I said that he never had one; I remember of saying that I never seen one.

Cross-Q. 23. Are you ready to swear that you didn't tell me that you never heard he had one till you heard that he had a suit about one?

A. I can't remember of telling him that, but I told him that I heard he had a suit about it.

Re-direct by Mr. Jacobs:

Q. Q. 24. Apart from Mr. Storrow's memoranda, I wish to ask you this question, which I desire you to answer according to your best present recollection, viz: whether or not you then told Mr. Storrow that although you had not seen, you had, whilst living at Eberly's Mills, heard of Mr. Drawbaugh's talking-machine?

A. I heard my brother George, and my sister Bella, and my mother, Emeline Natcher, and Mr. Leonard—that is about all; I heard them people talk about it, but I never seen it.

Q. Q. 24½. My question is: whether, when Mr. Storrow first visited you, you told him that you had heard of Drawbaugh's talking-machine whilst living at Eberly's Mills?

A. I told him that I had heard of it, but had never seen it till they had the suit about it; I hadn't been there since I left there in 1872—and I heard there was a suit about it. As far as I can remember, that is about all I said. Mr. Storrow left me then, and said I would hear from him again.

Q. Q. 25. My question is—for I wish to set the matter entirely right—whether you told Mr. Storrow when he first came to see you that you had heard of Drawbaugh's talking-machine when you lived at Eberly's Mills?

A. I told him I had heard of them, but never seen them.

[*Mr. Jacobs disclaims any discourtesy towards or imputation upon the motives or conduct of Mr. Storrow, but has considered it his imperative duty to-*

wards his clients, to examine the witness with regard to a fact which he voluntarily stated upon private examination, especially as the witness had previously been called by the complainants.]

Re-cross by Mr. Storrow:

Re-cross-Q. 26. You have just said that when Mr. Storrow left you on that day he told you that you would hear from him again. Did you see him again, or hear from him again, at any time, until you were summoned and came down here to Harrisburg to testify?

A. After harvest, on the 23d day of July, I was plowing, and when I came out to the end at the lane there was a gentleman standing there at the fence. He asked me if I was Mr. Natcher. I told him I was. He said that Mr. Storrow sent him to subpœna me to come down in the next morning's early train to Harrisburg, at the Bolton House, room No. 5, at ten o'clock; and I did so.

Re-cross-Q. 27. You mean that you didn't see Mr. Storrow from the time of the interview described until you saw him at the Bolton House at Harrisburg?

A. Yes, sir; I didn't see him till I came down to testify.

Re-cross-Q. 28. Had you ever seen any of Mr. Drawbaugh's telephones until you came down to Harrisburg to testify?

A. No, sir.

Re-cross-Q. 29. What do you mean, then, by saying that you told Mr. Storrow that you had never seen it till they had a suit about it?

A. Seen the telephone—no, sir; I had never seen it before.

[*Question repeated.*]

A. I don't understand that question.

Re-cross-Q. 30. Did you see it when they had a suit about it?

A. Not till I come here. There were some before me when I was on oath.

Re-cross-Q. 31. Had you ever seen one at the time Mr. Storrow talked to you?

A. No, sir; not before that.

Re-cross-Q. 32. You testified that you told Mr. Storrow that you had never seen it till they had a suit about it. Now, wasn't what you told him this: That you never heard of it till you heard they had a suit?

A. I didn't tell him I never heard of it. I told him I had never seen it, so far as I can remember.

Re-cross-Q. 33. You have testified in your 15th answer that Mr.

Drawbaugh told you that he had a machine invented that he could talk over the ocean. Did you tell that to Mr. Storrow?

A. No, sir; I didn't tell him that. Mr. Drawbaugh told me that he had, but I never seen it.

Re-cross-Q. 34. Why didn't you say to Mr. Storrow that Mr. Drawbaugh told you that?

A. I wasn't asked that. I thought it was no use to say what I wasn't asked.

Re-cross-Q. 35. Do you mean that Mr. Storrow didn't ask you whether Drawbaugh had ever spoken to you about his talking-machine?

A. I can't remember whether he asked me whether he ever spoke to me about it, or not. I said that I didn't remember of Mr. Drawbaugh ever having had a talking-machine.

Re-cross-Q. 36. If Mr. Storrow had put the question to you, would you have told him that he had a talking-machine, though you had never seen it?

A. If he would have asked me I would have told him; yes, sir.

Examination taken, reduced to writing, and by the witness affirmed and subscribed to before me, this 1st day of November, 1883.

FRED. M. OTT,
Examiner.

MICHAEL H. NATCHER.

GEORGE NATCHER, *being produced, affirmed, and examined, saith:*

Examined by Mr. Jacobs:

My age is twenty-five; residence, Carlisle, Cumberland county, Pennsylvania; occupation, tending bar for Jacob Thudium, at the American House.

Q. 1. William Natcher, a witness on behalf of the defendants, testified July 27, 1882, (see complainant's printed record, p. 500, *et seq.*) that his age was sixty-eight; residence, Carlisle, Cumberland county, Pennsylvania; occupation, formerly a miller. Are you related to him; and if so, how?

A. I am a son of his.

Q. 2. He further testified that he went to Eberly's Mills in April, 1870, to run the mill there as tenant for Beetem & Eberly; do you remember that fact?

A. Yes, sir.

Q. 3. He further testified that he went back to the same mill in 1871 as tenant for George Leonard, and remained there until sometime in August, 1872; do you remember those facts?

A. Yes, sir.

Q. 4. Did you live with him?

A. Yes, sir.

Q. 5. At both times when he lived at and ran the mill at Eberly's Mills?

A. Yes, sir.

Q. 6. He testified that he ran the mill for George Leonard up to the 9th of August, 1872; have you ever been at Eberly's Mills since that time?

A. No, sir.

Q. 7. Were you acquainted with Daniel Drawbaugh whilst you lived there?

A. Yes, sir.

Q. 8. Did you ever go to his shop while you lived at Eberly's Mills?

A. Yes, sir.

Q. 9. Did you ever see any talking-machines there at that time?

A. Yes, sir.

Q. 10. Who showed them to you?

A. Harmon Drawbaugh.

Q. 11. Did he tell you who had made or invented them?

[*Objected to as calling for second-hand statements of defendants' own witness.*]

A. He said Dan.

Q. 12. Where did Harmon Drawbaugh show you the talking-machines?

A. In the machine-shop.

Q. 13. Who occupied the machine-shop at the time?

A. Mr. Dan Drawbaugh was working in it and Harmon; that is all that I can remember.

Q. 14. Did any one talk through the machines with you?

A. Yes, sir; Harmon talked to me, and then he told me to talk back to him, and I did so.

Q. 15. Did you or not understand the words he said to you?

A. I did, but I don't recollect any more what he said.

Q. 16. Where were you and where was he whilst the talking was going on?

A. We were both together at the present time while he showed me how to talk; then he went to one place and I went to another; he went above and I went below.

Q. 17. Where were you when the talking took place?

A. He was working above; and when he went there and showed me, then I went below.

Q. 18. Below, to where? Where were you when you listened?

A. I went in the machine-shop on the lower floor; he was on the upper floor and I was on the lower floor.

Q. 19. It has appeared in evidence that, counting the basement as the first floor, there were three floors and an attic or garret in the machine-shop; on which of these floors were you?

[*Objected to as leading.*]

A. I won't say positive, but I think it was the one you went right off of the ground into; that would be the middle one; I won't say positive.

Q. 20. On which floor was Harmon Drawbaugh when the talking between you and him took place?

A. He was on the one above me.

Q. 21. Did you go to school whilst you lived at Eberly's Mills with your father?

A. Yes, sir.

Q. 22. Did any of Daniel Drawbaugh's children go to school with you?

A. Yes, sir.

Q. 23. Were you or not in the habit of visiting Daniel Drawbaugh's family at that time?

A. Yes, sir; I went there often.

Q. 24. Did you or not hear Mr. Drawbuugh's talking-machine spoken of during your visits at his house?

A. I did; I heard them speak of them.

Q. 25. Did you or not hear them spoken of in your father's family; and if so, by whom?

A. Yes, sir; they wanted my father to get one from his house to the mill to call them to their meals, but he never got it done. My father and Mr. Drawbaugh and my mother were speaking about them.

Q. 26. That, as I understand, was whilst you lived with your father at Eberly's Mills, was it?

A. Yes, sir.

Q. 27. Was Mr. Drawbaugh's talking-machine spoken of by others outside of his own family and your father's family whilst you lived there?

A. It was; but I don't recollect any more who it was.

Q. 28. Did you hear one person or more than one person speak of it at that time?

[*Objected to as leading.*]

A. I heard a good many speak of it, but I don't recollect who they are.

[*Each and every question and answer objected to as not in rebuttal.*

Mr. Jacobs calls, in answer to the objection, particular attention to the fact that the witness has testified that he heard his father, William Natcher, talk of Daniel Drawbaugh's talking-machine whilst he lived at Eberly's Mills.

Complainants' counsel calls attention to the fact that even the 25th question calls for, and the answer to it purports to state what other people said.

Mr. Jacobs calls attention to the fact that witness testified in answer to question 25, *as follows:*

"*My father and Mr. Drawbaugh and my mother were speaking about them,*" *and that question* 25 *directly asked the witness whether he heard the talking-machines spoken of in his fathers' family; and if so, by whom?*]

Cross-examined by Mr. Storrow, de bene esse:

Cross-Q. 29. What house was it that they talked of connecting with the mill by a talking-machine?

A. The house my father lived in, right across from the mill.

Cross Q. 30. What kind of a house was it—brick or wood or stone?

A. Weather-boarded.

Cross-Q. 31. Do you mean right across the road from the mill, or what do you mean by right across from the mill?

A. It was kind of across from the mill—catacornered across from the mill; it was partly weather-boarded and partly plastered.

Cross-Q. 32. Was it the regular miller's house?

A. Yes, sir; at that time, in 1872, he lived in it.

Cross-Q. 33. And it was in 1872 that this talk about putting up the talking-machine took place, was it?

A. Yes, sir.

Cross-Q. 34. Why didn't your father put it up?

A. I don't know rightly, but he moved away too soon; I suspect that was the reason he didn't do it; he didn't stay as long as he expected to stay.

Cross-Q. 35. This was shortly before he moved away, was it?

A. I don't recollect rightly just what time it was; it was somewheres before he moved away.

Cross-Q. 36. And you understood at the time that the reason he didn't put it in was because he expected to move away pretty soon.

A. I suppose that was the reason; he wouldn't need it while he wasn't there.

Cross-Q. 37. Who wanted him to put it in—your mother?

A. Mr. Drawbaugh spoke about it, and mother asked father whether he would get it done, but he didn't get it done.

Cross-Q. 38. Did you hear Mr. Drawbaugh speak to your father about it?

A. I didn't hear him; I heard my mother speak to him about it—not at that time I didn't.

Cross-Q. 39. When did you hear Mr. Drawbaugh speak to your father about it, if you ever did?

A. I don't recollect of knowing the date, but I heard him speak of it often; I don't know any date.

Cross-Q. 40. Did you often hear Mr. Drawbaugh ask your father to put in a talking-machine between the house and the mill?

A. I did from the house to the mill; I didn't between the house and the mill.

Cross-Q. 41. Will you explain to me the distinction between those two statements?

A. The way I understood you to say was "between" the house and the mill. If he had wanted a talking-machine, it would have been *from* the house to the mill; that is what I mean—I mean from the house to the mill.

Cross-Q. 42. Whereabouts were you when you heard him propose to your father to have one put up to connect the house and the mill?

A. I was in the mill and I was outside of the mill when I heard him speak of it.

Cross-Q. 43. Did you ever hear him in your father's house speak to your father about putting up this connecting line?

A. No, sir; not in the house I didn't; not more than my mother told me that he spoke of it in there.

Cross-Q. 44. When you first went to live at Milltown, did you hear that Drawbaugh had a talking-machine?

A. Yes, sir; I knowed he had one, but I didn't see it; and I didn't say anything about it then—not till I moved there the second time.

Cross-Q. 45. You have spoken of talking through the machine with Harmon Drawbaugh; tell us as nearly as you can when that was.

A. In 1872, the last year we lived there.

Cross-Q. 46. What season of the year was it—summer weather, or winter weather?

A. Summer; we moved away towards fall.

Cross-Q. 47. Then it was the summer of 1872, was it?

A. Yes, sir.

Cross-Q. 48. Which floor of the shop were you on when you talked and listened at the machine?

A. The one you go in off of the ground.

Cross-Q. 49. Was there any machinery in that room?

A. I don't recollect rightly whether there was any machinery there or not.

Cross-Q. 50. Had it a board floor or a dirt floor?

A. I don't recollect; I think it was a board floor, though.

Cross-Q. 51. I understand you that you went on to a floor where Harmon Drawbaugh was working; and then he took you down-stairs and showed you the machine and went up again, and he and you talked back and forward; is that so?

A. He stayed up and I went down; he showed me in the upper story, and I went down after he showed me, and talked up to him.

Cross-Q. 52. Did you go down by yourself and find a talking-machine down-stairs?

A. Yes, sir; I went down by myself; I knowed where it was after I knowed where it was above.

Cross-Q. 53. How many times before that had you seen it?

A. I don't know how many times before; I had seen it often before; I never talked through it before, though.

Cross-Q. 54. Did you generally see it in the same place down stairs where you found it that time?

A. Yes, sir; but I didn't know what it was—how you done it—till he showed me how to talk through it.

Cross-Q. 55. When you had seen it down there before at the same place, had you known that it was a talking-machine?

A. I heard them say that he had one, but I didn't know what it was till they told me what it was.

Cross-Q. 56. Whom do you mean by they—who was it that told you?

A. Mr. Drawbaugh and Harm, spoke about it.

Cross-Q. 57. Did you ever hear anybody else say what it was, in the shop?

A. I heard them, but I don't recollect any more who it was.

Cross-Q. 58. Tell me as near as you can whereabouts in the room it was when you talked and listened at it?

A. I don't recollect rightly whereabouts in the room it was; I think it was at the other end—the far end—I won't be positive, though.

Cross-Q. 59. Other end from what?

A. As you come in the door.

Cross-Q. 60. Was that a room where men had worked—with benches around it?

A. I don't recollect rightly what was going on in that room.

Cross-Q. 61. Was this machine in plain sight, or was it covered up and concealed?

A. It was in plain sight.

Cross-Q. 62. Did you talk first into it, or listen at it first?

A. Harm first spoke through it, and I listened; then I spoke to him.

Cross-Q. 63. Did you hear and understand all he said through it?

A. Yes, sir.

Cross-Q. 64. Did he tell you through it to speak back to him?

A. No, sir; he spoke to me through it and I answered him through it, but he didn't tell me to answer back.

Cross-Q. 65. Did he only put one question to you and you answer back, or did you and he carry on a kind of conversation in that way?

A. He only asked me a few words and I answered back, and that was all I talked in it.

Cross-Q. 66. I understood you to say that he was working in the shop when you went there that day; is that the fact?

A. He was; yes, sir.

Cross-Q. 67. Was he working at the bench or on one of the machines?

A. He was working at a lathe—some kind of a machinist he was; I don't know what he was working at—some kind of machinery.

Cross-Q. 68. The lathes in that shop were run by a water-wheel, I believe, were they not?

A. I don't recollect whether they had steam power or water power.

Cross-Q. 69. There was some kind of power to turn them; a man didn't have to turn them himself, did he?

A. It was either water or steam; I don't know which one, though.

Cross-Q. 70. I understand you to say that he stayed up-stairs and didn't go down with you at all; is that the fact?

A. I went down and he stayed up.

Cross-Q. 71. This talking-machine that you used down-stairs—was it fastened to the wall or laid on a bench, or how was it arranged?

A. I think it was against a wall; I won't say positive.

Cross-Q. 72. You said in your 16th answer that after he had showed you how to talk, "then he went to one place and I went to another; he went above and I went below." I understand you to say now that that is not true—that he didn't go above, but stayed where he was; what is your recollection about it?

A. He stayed where he was; that is what I think I said in the first place.

Cross-Q. 73. In your 14th answer you said: "Harmon talked to me and then he told me to talk back to him." You have since said that he didn't tell you to talk back to him; what is your recollection now about it?

A. He talked to me and I talked back to him—only the few words it was.

Cross-Q. 74. Where did you work before you began keeping bar at the American House?

A. I worked for Mr. Albright, threshing with a steam threshing-machine. Before that I was harvesting; and before that I worked in the car-shops at Carlisle till they shut down.

Cross-Q. 75. Who first spoke to you about testifying in this case?

A. Mr. Henry F. Drawbaugh, of Newville, yesterday.

Examination taken, reduced to writing, and by the witness affirmed and subscribed to before me, this 1st day of November, 1883.

FRED. M. OTT,
Examiner.

GEO. F. NATCHER.

Adjourned until November 2, 1883, at 10 A. M.

November 2, 1833, 10 A. M.

Examination resumed pursuant to adjournment. Present, Mr. Storrow and Mr. Howson for complainants, and Mr. Jacobs for respondents.

WILLIAM NATCHER, *being produced, sworn, and examined, saith*:

Examined by Mr. Jacobs:

Q. 1. You are the same William Natcher, are you not, who before testified in this case on behalf of the complainants (see Complainants' printed record, p. 500, *et seq.*)

A. Yes, sir.

Q. 2. After you had testified and returned home, did you receive through the mail a printed copy of your deposition?

A. Yes, sir.

Q. 3. Please produce it and the envelope in which it was enclosed.

A. Yes, sir; here it is.

[*Witness produces prtnted copy of deposition and the envelope.*

At the request of Mr. Jacobs the examiner notes that the printed copy produced bg witness is a copy of complainants' printed record from page 499 *to page* 510 *inclusive; also, that the envelope is addressed to "William Natcher, Esq., Carlisle, Cumberland County, Penna," bears the postmark "Shiremanstown, Pa. Apr.* 12," *and is marked upon the upper left-hand corner, "Return to Jno. C. Comfort, Harrisburg, Pa.," and bears the receiving mark "Carlisle, Pa., Apr.* 13, 9 *A. M. Recd."*]

Q. 4. That envelope appears to have been sent to you last April; is that your recollection?

A. Yes, sir.

Q. 5. Did you read your printed deposition after receiving it?

A. Yes, sir.

Q. 6. After coming off the witness-stand did you or not further reflect about the subject of Mr. Drawbaugh's talking-machines, concerning which you had been asked in your deposition?

A. Yes, sir.

Q. 7. I find that you were asked in your deposition: [question 30, page 504, of Complainants' printed record:] "Did he [referring to Daniel Drawbaugh] ever show you any talking-machines while you lived there [referring to Eberly's Mills]?" to which you answered "No, sir." And again [question 31]: "While you lived there did you ever hear that he had a talking-machine?" To which you answered, "No, sir; he never told me he had it." I wish now to ask you, after having read over your

deposition, and having reflected upon the matter as you have stated, what your present recollection is about it? Did you or not, whilst you lived at Eberly's Mills, hear that Daniel Drawbaugh had a talking-machine?

A. Yes, sir; I heard he had.

Q. 8. Whom did you hear say he had a talking-machine?

A. John Drawbaugh, Harmon Drawbaugh, George Leonard, George Heck, David Good, a man by the name of Kissinger, who kept store there, and Mr. Hart; it was generally spoken of in the little village, or whatever you may call it, of Milltown, that Daniel Drawbaugh had a talking-machine by which he could communicate from one place to another; I heard my daughter Bella and my son George speak of it, too.

Q. 9. A man by the name of George W. Kissinger testified as a witness for Complainants, [see Complainants' printed record, p. 551,] and said, among other things, that he kept a little store at Eberly's Mills from April, 1871, to April, 1874; [see Complainants' printed record, p. 556]; is that the Mr. Kissinger whom you heard speak of Drawbaugh's talking-machine whilst you lived at Eberly's Mills?

A. That is the gentleman; yes, sir.

Q. 10. A man named Daniel Hart testified on behalf of complainants in this case, [see Complainants' printed record, p. 1512,] and said that his age, at the time his deposition was given, April 19 and 20, 1883, was sixty-six; residence, Cumberland county, Pa., near Milltown; and that he owned a farm which he helped his son to farm; is that the Mr. Hart whom you heard speak of Mr. Daniel Drawbaugh's talking-machine while you lived at Eberly's Mills?

A. Yes, sir; that is the man.

Q. 11. You mentioned George Heck as one of the persons whom you heard speak of Drawbaugh's talking-machine whilst you lived at Eberly's Mills; is he living?

A. No, sir; he is dead; he died since I left there—since 1872.

Q. 12. Do you remember any particular conversation with George Leonard about Drawbaugh's talking-machine?

A. Yes, sir; we had some conversation about it.

Q. 13. Can you give the substance of it?

A. Yes, sir; I think I can. I had his mill—we always called it leased—I had it for the shares. I was to have the one third of the tolls and flour-grinding, half of the off-falls, house rent free, and the gardens. During my time there, he told me I should get Drawbaugh to put up a talking-machine there, from the house to the mill, to call me to my meals. I told

him if I was certain of staying there any length of time, I would like to have it put up.

Q. 14. You testified in your deposition on behalf of the complainants, that your last entry upon your books in account with George Leonard, was of the date of August 9, 1872; and that was in reply to a question asking you up to what date you ran that mill for George Leonard. I infer from that that you moved away from Eberly's Mills immediately after that date—August 9, 1872; is that the fact?

A. Yes, sir.

Q. 15. Have you lived there since?

A. No, sir.

Cross-examined by Mr. Storrow:

Cross-Q. 16. When did you come down here to Harrisburg to testify this time?

A. Yesterday, in the morning train.

Cross-Q. 17. Were you not down here day before yesterday?

A. No, sir.

Cross-Q. 18. Who came down with you in the yesterday morning train?

A. My son Michael and George, and some other passengers that were in the cars—Mr Barney Wilder, and Mr. Parker Jackson, and some I didn't know.

Cross-Q. 19. Who furnished you with money or tickets to come down?

A. I furnished myself; I drew some of my wages from Peter Albright. My son Michael was short and I paid his fare; my son George started from Carlisle and paid his own.

Cross-Q. 20. Had you received any money before that for witness fees or travel in coming down here?

A. No, sir; I think neither of us three knew anything of coming till quite late on evening before last—the last day of October.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 2d day of November, 1883.

FRED. M. OTT,
Examiner.

WM. NATCHER.

Recess from 11.30, A. M. to 2.30 P. M.

2.30 P. M. Examination resumed.

JESSE EICHOLTZ, *being produced, sworn, and examined, saith:*

Examined by Mr. Jacobs:

My age is forty-seven; residence, Grantville, Susquehanna township, Dauphin county, Pennsylvania; occupation, carpentering now; it used to be milling.

Q. 1. Are you acquainted with Daniel Drawbaugh; and if so, how long have you known him?

A. I have known Daniel Drawbaugh for about sixteen years—in that neighborhood—or probably seventeen.

Q. 2. Will you state whether you and George B. Eyster, the present sheriff of Cumberland county, were ever, as partners, the tenants of Oyster's mill, on the Conodoguinet creek, in Cumberland county, Pennsylvauia?

A. Yes, sir.

Q. 3. Whilst you and Mr. Eyster were tenants of that mill, did you ever have occasion to call upon Mr. Daniel Drawbaugh to do any work about that mill?

A. Yes, sir.

Q. 4. State, if you please, what work he did.

A. He made us a sleeve to splice a broken cast water-wheel shaft.

Q. 5. Can you produce any book of original entry which shows when that work was done?

A. Yes, sir; it was taken away from Drawbaugh's shop November 6, 1873.

Q. 6. From whom did you rent the mill at that time?

A. I had then rented the mill from J. B. Heck, guardian of Allie Oyster. I had rented the mill about five years before Mr. George B. Eyster went into partnership with me.

Q. 7. Will you please point out any entry upon your book that shows when that work was done?

A. Yes, sir; I can. I can't to the date when it was finished. It was taken from Mr. Drawbaugh's shop November 6, 1873. He agreed then to take his pay in trade out of the mill; I delivered that later. The first charge, though, I delivered him on the day that I took away the sleeve from his shop; I delivered him chop for the sum of two dollars and thirty-eight cents, that he ordered when he was up getting the size of the sleeve to make the pattern. The day I delivered the chop was the last time I

was in Mr. Drawbaugh's shop. On November 6, when I fetched the sleeve from Drawbaugh's, I came to Harrisburg and paid Bay & Bros., founders, for casting the sleeve. John Teahl rode along with me that day from Teahl's mill, where he was milling at that time. The balance of the pay Drawbaugh then agreed to take out in trade. On December 20th, then, I sent him eight bushels of chop. The amount was $4 80. The balance was paid in 1874, March 2d, a half barrel of flour, $4 50; that is what I paid Drawbaugh for his work—his full charge. The three items amounting to eleven dollars and sixty-eight cents.

Q. 8. Will you turn now to the account of J. B. Heck, and point out to the examiner any charge you may have there which shows when that work was done by Mr. Drawbaugh?

A. Yes, sir; that is the day that I charged it to Mr. Heck—the same day, Nov. 6; it was charged on the rent then.

[*In J. B. Heck's account, Nov. 6, 1873, is the following charge: "To Drawbaugh, $12 42." This appears on page* 118.]

Q. 9. Were you, at or about that time, at Drawbaugh's shop?

A. Yes, sir; I was there on the 6th of November, 1873—in the morning of that day when those charges were made.

Q. 10. What were you there for?

A. I went after that sleeve.

Q. 11. Who was with you?

A. My wife went along with me.

Q. 12. State whether or not you ever saw at Drawbaugh's shop any talking-machines?

A. Yes, sir; I did.

Q. 13. When?

A. On November 6, 1873.

Q. 14. Who showed them to you?

A. Mr. Drawbaugh.

Q. 15. Did he or not talk through them to you?

A. Yes, sir.

Q. 16. Did you or not understand what he said to you?

A. Yes, sir; I understood him plainly.

Q. 17. Did he or not then say to you anything about getting his talking-machine patented and introduced into use; and if so, what did he say?

[*Objected to as leading.*]

A. He said that he would if he had the money or the means, but he hadn't the means. He asked me whether me and Mr. Eyster would have any more money than we would have use for. I told him that for my part I hadn't, and as for Eyster, I didn't know whether Eyster had, but at the same time Eyster could get all the money he wanted. And I told him I would speak to Eyster. He asked me to speak to Eyster about it then.

Q. 18. Did you ever speak to Mr. Eyster about it?

A. Yes, sir; I told Mr. Eyster about it; told him to go and see it; told him that Mr. Drawbaugh told me that if he could only get some one to help him, once, he would run it to Harrisburg and convince them, and then he would run it from Harrisburg to Philadelphia. He said if he could once reach Harrisburg he could then convince them that he could talk further, and could get plenty of money. Them is the words I think that he told me. I told Eyster then, "George, go down there and go in partnership, and risk it as far as Harrisburg." And I would have, too, if I had been him—if I had had the means his daddy had.

Q. 19. By Mr. Eyster I understand you to mean Mr. George B. Eyster, who was then in partnership with you in running Oyster's mill. Is that correct?

A. Yes, sir; that is correct. He is now sheriff of Cumberland county.

Q. 20. Are you acquainted with Mr. John C. Comfort?

[*Objected to as immaterial.*]

A. Not personally; I know him; we have known each other for some years.

Q. 21. Did you ever have any conversation with him with reference to Drawbaugh's talking-machines?

[*Same objection.*]

A. Yes, sir.

Q. 22. When?

[*Same objection.*]

A. I can't recollect the date, but it was the day before the Cumberland County Democratic Convention of the last election. It was here in front of the White Hall, at Harrisburg.

Q. 23. Can you tell who was then a candidate for the nomination for any office?

[*Same objection.*]

A. Yes, sir; George B. Eyster and Harry Bowman.

Q. 24. For what office was George B. Eyster a candidate, and for what was Harry Bowman?

[*Same objection.*]

A. Eyster was a candidate for sheriff of Cumberland county, and Harry for member of the Legislature.

Q. 25. Can you tell how long ago that was?

[*Same objection.*]

A. That was the day before the Democration Convention of Cumberland county of last year; I can't tell the day exactly.

Q. 26. You mean the year 1882, do you?

A. Yes, sir.

Q. 27. State whether or not Mr. John C. Comfort then asked you about your knowledge of Drawbaugh's talking-machine.

[*Same objection.*]

A. Yes, sir; he did.

Q. 28. What did you tell him?

[*Same objection.*]

A. He asked me how long ago that I left Milltown; I asked him what he meant. He said "When did you quit milling at Milltown?" I told him I never milled there. He said, "Why, didn't you mill there?" I told him I didn't. He said that he thought that I had lived at Milltown. I told him not. He then asked me whether I knew anything of Drawbaugh's talking-machine; I told him I did. He asked me then whether I thought it would work, and I told him that I thought it would; that it did work well the last time I was there. He then said that he understands it did work well. That is about all I recollect. He said something of that kind—that he heard it worked well, or understood it worked well. I don't remember exactly any more. I have since learned that he was for the other party. I think that is about all that was said on that subject, and then I asked him whether he thought Eyster would make the nomination.

Cross-examined by Mr. Storrow, de bene esse.

Cross-Q. 29. What work was going on at Drawbaugh's shop at that time?

A. They were working on faucets, I think, at the time; he also had a couple of patent clocks that he showed me at the time, and he had a patent pump and some other articles that he showed me. It has been so long ago that I don't hardly recollect any more.

Cross-Q. 30. What sort of looking things were the patent clocks?

A. I can hardly recollect any more, but I think one of them was all open except the face; there was a little face in front of the works, and a little box underneath it. That is about all I recollect of it. The other was a larger clock, and it was in a case, if I mistake not; I think he had three or four different clocks there, but I wouldn't like to swear to that; it runs in my mind that he had.

Cross-Q. 31. Did these clocks run by electricity or magnetism so that they didn't have to be wound up?

A. He told me so, but I don't understand it myself; I only know what he told me about it—he showed me. I know they didn't run by a spring, neither by a weight, because I examined that closely.

Cross-Q. 32. Whereabouts in the building were you when Mr. Drawbaugh talked to you through the talking-machine and you listened?

A. We were on the lower story.

Cross-Q. 33. Were you and Mr. Drawbaugh on the same story?

A. Yes, sir; me and Mr. Drawbaugh and my wife was when we first went in.

Cross-Q. 34. Were you and Mr. Drawbaugh on the same story while he was talking through the machine and you listening?

A. No, sir.

Cross-Q. 35. What story was he in?

A. He was on the third story—two stories above me.

Cross-Q. 36. Was the water-wheel and machinery running?

A. No, sir; not the first time he spoke to us.

Cross-Q. 37. Was it the second time?

A. Yes, sir.

Cross-Q. 38. How long was it between the first time he spoke to you and the second time he spoke to you?

A. It wasn't ten minutes—probably not five. He just came down and started the wheel and went right up again.

Cross-Q. 39. Is it your recollection that you heard him plainly both times that he talked to you?

A. Yes, sir; I heard him plain.

Cross-Q. 40. How heavy a piece of casting was this sleeve you speak of?

A. I suppose this sleeve weighed in the neighborhood of eighty or a hundred pounds.

Cross-Q. 41. Was it for your main shaft?

A. Yes, sir.

Cross-Q. 42. I understand that you paid Bay & Bro. for the casting in addition to what you paid to Mr. Drawbaugh; is that the fact?

A. I think I did; I can't find no other charge.

Cross-Q. 43. Did you order it from Bay & Bro., or was it ordered by Mr. Drawbaugh and charged to him?

A. It was ordered by me—the casting.

Re-direct by Mr. Jacobs:

Q. Q. 44. You have testified on cross-examination that the water-wheel and machinery were running in Drawbaugh's shop at the second time you listened at his talking-machine, within five or ten minutes after you listened the first time; do you remember whether Mr. Drawbaugh set the water-wheel and machinery going; and if so, why he did it?

A. Yes, sir; he set it going; he said he would start the wheels now, and go up and talk to us again, and we should listen again and would still hear him. I remember one word yet that he spoke to me. He asked us, when he was just going to quit, "Do you understand me?" and I said "Yes." Then he came down and said, "I understood you, and you understood me." I don't remember what else he had talked to us, but I mind that.

Re-cross by Mr. Storrow:

Re-cross-Q. 45. When you were talking this matter over with Mr. Jacobs before testifying, you told him this about starting the wheel as you have just testified, didn't you?

A. Yes, sir.

[*Each and every question and answer objected to by Mr. Storrow as not in rebuttal.*]

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 2d day of November, 1883.

FRED. M. OTT,
Examiner.

JESSE EICHHOLTZ.

MALINDA ANN EICHOLTZ, *being produced, sworn, and examined, saith:*

Examined by Mr. Jacobs:

Q. 1. You are the wife of Jesse Eicholtz, who has just testified in this case, are you not?

A. Yes, sir.

Q. 2. He has testified that upon the 6th of November, 1873, he was at Daniel Drawbaugh's shop, Eberly's Mills, to get a sleeve for a shaft in the mill which he was then running with Mr. George B. Eyster; and that you were along with him at that time; is that the fact?

A. Yes, sir; I was along with him at that time.

Q. 3. Did you meet Daniel Drawbaugh there at that time?

A. Yes, sir.

Q. 4. Did he there show you any of his inventions?

A. Yes, sir.

Q. 5. What inventions did he show you?

A. He showed us different inventions—I couldn't just mention them all—he showed us the clock and the talking-machine, as they called it at that time.

Q. 6. Did he talk through the talking-machine for you at that time?

A. Yes, sir; he talked through it.

Q. 7. Did you understand distinctly the words that he spoke?

A. Yes, sir.

Q. 8. Do you remember whether the water-wheel in the cellar was running when he first talked through his talking-machines to you?

A. No, sir; not at first when he talked to us it wasn't; but he started it and talked to us, too.

Q. 9. After he had started the water-wheel, did you understand distinctly the words that he spoke through the talking-machine?

A. Yes, sir.

Q. 10. Before starting the water-wheel, did he tell you that he was going to do so, and why?

A. Yes, sir; he said he would start it and see whether we could understand him when there was noise.

Q. 11. Were you ever at his shop more than that one time?

A. No, sir.

Q. 12. Had you ever heard of his talking-machine before you made that visit to his shop?

A. Yes, sir; men talked of it when they came for their meals, and at the mill I heard it talked of, too; it was common talk around there. I refer to Oyster's mill that my husband was then running. The men generally would talk of it when they came to their meals, and then when I would get down to the mill, I would also hear talk of it from strangers coming in.

Q. 13. How far is it from Oyster's mill to Drawbaugh's shop?

A. I can't right tell you; I think it must be about three miles, or perhaps a little over; I don't mind exactly, as I was only down there once.

[*Each and every question and answer objected to as not in rebuttal.*]

Cross-examination, de bene esse, by Mr. Storrow:

Cross-Q. 14. Had you heard this common talk about Drawbaugh's talking-machine just a little while before you went down there about the sleeve, or a good while before?

A. I had heard it a good while before that.

Cross-Q. 15. Is it your recollection that you heard it a number of years before that?

A. Yes, sir; but I cannot tell just how long before, but I had heard of it a good while before.

Cross-Q. 16. When did you go to live at Oyster's mill?

A. It was sixteen years last spring; that would make it 1867 when we moved to the mill.

Cross-Q. 17. Did you hear talk about it when you first moved there or pretty soon after it? What is your recollection about that?

A. The first that I heard of it was some time before my husband went down to Hake's mills and distillery. He said he would stop in and see it. That was in 1870 or 1871, I think, when he went down there. I had heard of it before that, but don't know how long before.

Cross-Q. 18. Was it quite a while before that, or just a few days before?

A. It was some time before that, but I couldn't say how long.

Cross-Q. 19. What did you hear about it?

A. I heard that Mr. Drawbaugh had invented a machine to talk with, and that he could talk to Philadelphia with it, or almost as far as he wished to.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 2d day of November, 1883.

FRED. M. OTT,
Examiner.

MALINDA A. EICHOLTZ.

JESSE EICHOLTZ *recalled:*

Examined by Mr. Jacobs:

Q. 1. It has appeared from your wife's deposition that you had some knowledge of Mr. Drawbaugh's talking-machine before the visit which you and your wife made to his shop in November of 1873. Will you tell us when you first knew of and saw it?

A. Yes, sir; I think it was in 1871, if I am not mistaken; some time in the summer of 1871.

Q. 2. Did you see it at that time?

A. Yes, sir.

Q. 3. Who showed it to you?

A. Daniel Drawbaugh.

Q. 4. Did he talk through it to you?

A. Yes, sir.

Q. 5. Did you or not understand distinctly the words he spoke?

A. Yes, sir.

Q. 6. Had you heard of his talking-machine before you saw it at that time?

A. Yes, sir; I heard it spoke about; and I met him, and he told me about it, and said that I should call in and see it.

Q. 7. Can you tell how long before that visit you had heard of his talking-machine?

A. No, sir; I don't exactly mind what time, but it was talked there at the mill. Finally, I met him, and he talked about it.

Q. 8. By "the mill" you mean Oyster's mill, do you not?

A. Yes, sir.

Q. 9. What was the object of your visit to Drawbaugh's shop at the time you first saw his talking-machine in 1871?

A. My object was to see this talking-machine, as he had invited me to come and see it. I think I met him at Bridgeport the day that he spoke about it. He invited me to come and see the shop. That was the first time I was ever there. He told me that he had this talking-machine at that time, and that I should call in and see it if I got in that neighborhood.

Cross-examined by Mr. Storrow, de bene esse:

Cross-Q. 10. Did you tell Mr. Jacobs about this first visit before you gave your first deposition to-day?

A. Yes, sir; I think I had mentioned it to him.

Cross-Q. 11. When you listened and heard what he said to you through the machine at that visit, was the machinery running?

A. That I can't recollect any more whether it was or not; it has been too long.

Cross-Q. 12. Do you know the Simon Oyster farm that Wilson Walters lives on?

[*Objected to by Mr. Jacobs as not proper cross-examination.*]

A. Yes, sir.

Cross-Q. 13. Is that on the road that you take in going from Oyster's mill to Eberly's Mills?

[*Same objection.*]

A. It is on the road, but not the road we went. We had a nearer road by Jacob Sadler's and Camp Hill—a good deal nearer.

Cross-Q. 14. How far is Walters' place from Oyster's mill?

[*Same objection.*]

A. It is in the neighborhood of a mile; you might say a short mile; I don't think it is quite a full mile.

Re-direct by Mr. Jacobs:

Q. Q. 15. When, prior to your coming on the witness-stand the first time to-day, you told Mr. Jacobs of your visit to Drawbaugh's shop in 1871, and of your having seen and talked through talking-machines there and then, did you or not produce to him any book-entry, or instrument of evidence by which you could fix the date of that visit?

A. No, sir; because I went after whisky that time and, of course, paid cash for it, so that there wasn't any book-entry; I couldn't recollect the time, only that it was in 1871, and in the summer of 1871.

Q. Q. 16. Where did you go for that whisky?

A. To Mr. Elias Hake's distillery.

[*Witness makes the following statement:*]

As to that first visit, I would say that that first talking-machine was entirely different from the second. The first consisted of a tin can and a glass tumbler. They were connected by a string; if I mistake not, it was a string instead of a wire. The second was connected by wire. That is my recollection; but it has been so long since that I wouldn't positively swear that it was a string or a wire, but I think it was a string.

Q. Q. 17. In view of your above voluntary statement, I wish you to look at exhibits marked "B," "C," "F," and "I," and say whether you saw any of them at Mr. Drawbaugh's shop at your 1871 visit, when he first talked to you through his talking-machine?

A. Yes, sir; I think I saw those two, or something like them, if I mistake not, [indicating "F" and "B."] Those I saw at the first time. The tumbler ["F"] I saw both times. This, or something similar to this, ["C"] I mind of, but I remember it had something attached to it shaped like a horse-shoe. It was something with wood the color of this [touching the mouth-piece of "C;"] I don't know whether it was this same one or not, but it was very much like it. This, [indicating "I,"] I am not so sure of, but it runs in my mind that there was something there the shape of a jar—something like this one.

Q. Q. 18. Do you remember the material of which the horse-shoe which you think was attached to instrument "C" was made?

A. It was bright metal, but what that metal was I couldn't tell you—whether it was iron or steel.

Re-Cross-examined by Mr. Storrow:

Re-Cross-Q. 19. Which of these instruments is it that you think you listened at on your visit which you think you made in 1871?

A. I can't remember which one I listened at; I can't remember that very well. It has been too long.

Examination taken, reduced to writing, and by the witness subscribed to before me, this 2d day of November, 1883.

JESSE EICHOLTZ.

FRED. M. OTT,
Examiner.

Adjourned until November 3, at 10 A. M.

Saturday, November 3, 1883.

Examination resumed pursuant to adjournment. By consent, proceeded to Highspire, Dauphin county, to take the following deposition:

Present, Mr. Storrow for complainants, and Mr. Jacobs for respondents.

Mrs. JENNIE M. BROWN, *being produced, sworn, and examined, saith:*

Examined by Mr. Jacobs:

Q. 1. What was your maiden name?

A. Jennie M. Darr.

Q. 2. When were you married?

A. In 1868, the 7th day of July.

[*Witness produces marriage certificate, showing her marriage on that day.*]

Q. 3. A witness by the name of William Darr has testified in this case on behalf of the complainants. Are you related to him?

A. Yes, sir; I am his daughter.

Q. 4. Are you acquainted with Daniel Drawbaugh, of Eberly's Mills, Cumberland county, Pennsylvania?

A. Yes, sir.

Q. 5. Your father has testified that he formerly lived at Eberly's Mills, and moved away from there on the last day of March, 1870. Is that your recollection?

A. Yes, sir.

Q. 6. Did you ever live in the family of Daniel Drawbaugh before your marriage? If so, when?

A. Part of 1867 and 1868. I went in the fall of 1867—I couldn't exactly state the time—but I lived in his family all through the winter, and left in April of 1868.

Q. 7. Have you any knowledge of a talking-machine which Daniel Drawbaugh had at Eberly's Mills; and if so, when did you first obtain any knowledge about it?

A. I could scarcely tell when, to tell the truth, because I heard about it a long time before I went there. I couldn't state the length of time, but I heard of it a couple of years before I lived there. They were talking of it, but I didn't see it till I lived there.

Q. 8. Do you mean that you heard of it a long time before you lived in Drawbaugh's family?

A. Yes, sir.

Q. 9. Did you hear it spoken of in his family whilst you lived in his family?

A. Yes, sir.

Q. 10. By whom?

A. Mr. Drawbaugh and Mrs. Drawbaugh.

Q. 11. Do you remember anything that Mrs. Drawbaugh said about it?

[*Objected to by Mr. Storrow as incompetent.*]

A. I remember of her scolding Mr. Drawbaugh considerable about its not amounting to a pinch of snuff; and also scolding him for wasting his time and money.

Q. 12. Do you mean upon the talking-machine?

A. Yes, sir.

Q. 13. Did you hear others speak about it besides Mr. and Mrs. Drawbaugh?

A. Yes, sir.

Q. 14. Did you or not hear it spoken of in your father's family? If so, by whom?

[*Objected to as leading.*]

A. I often heard it spoken of by my father and mother, and folks that came in, at home.

Q. 15. Was that before, or after your marriage?

A. Before my marriage.

Q. 16. Do you remember any particular remarks which your father made about Drawbaugh's talking-machine before your marriage?

A. He often said to mother that if he would be able to get it accomplished he would be a very rich man some day; and that he thought it was a very good invention.

Q. 17. Did you or not before your marriage hear that Drawbaugh had been talking through his talking-machine?

[*Objected to as incompetent.*]

A. He talked through it when I lived in his family. He talked through it then.

Q. 18. Did or did not his wife raise much opposition to his work on the talking-machine?

[*Same objection.*]

A. She was opposed to it very much.

Q. 19. In your answer to my 7th question you have said that you heard Mr. Drawbaugh's talking-machine spoken of, but did not see it till you lived in his family; did you or not see it then?

A. I seen some part of it.

Q. 20. Can you describe any part or parts of it which you then saw?

A. I seen an old cup and a glass, and something that looked like a string or a wire—I couldn't tell what it was—and some small tools of his lying there—tools that he was working with.

Q. 21. Did you or not understand at the time that the cup and the glass that you saw had something to do with his talking-machine?

A. Yes, sir; he often said that it was part of it, but we always made light of it—Mrs. Drawbaugh and I both.

Q. 22. What kind of a cup was it?

A. A common stoneware tea-cup.

Q. 23. What kind of a glass was it?

A. A common white glass or tumbler.

Q. 24. Did you or not hear Drawbaugh's talking-machine spoken of in the community outside of his own and your father's families?

A. I did.

Q. 25. By few or many people?

A. By many.

Q. 26. Was it or not common talk in that community?

[*Objected to as leading.*]

A. That was all the talk for awhile; some of the folks made light of it, and others thought it was very good.

Q. 27. What has been your father's physical condition during the last four or five years?

A. I think he is a little weak-minded for one thing, and he has been nervous for the past four or five years.

Q. 28. How long would you say he had been weak-minded?

A. Somewheres along two or three years, I think.

Q. 29. Has his memory been reliable during the last two or three years?

A. I don't think it has.

[*Each and every question and answer objected to as not in rebuttal.*]

Cross-examined by Mr. Storrow, de bene esse:

Cross-Q. 30. In your 17th answer you said that Mr. Drawbaugh talked through his talking-machine while you lived in his family; I suppose, from your stating it as a positive fact, that you must have heard him; is that the fact?

A. No, sir; I heard them speak about it.

Cross-Q. 31. Did you hear him say that he had actually talked through it?

A. I heard him tell Mrs. Drawbaugh that he had talked down to shop —the lower shop.

Cross-Q. 32. What place did he talk from?

A. From the shop below the house—under the stairs.

Cross-Q. 33. Was that the shop in the lower story of his red house, back of the mill?

A. Yes, sir.

Cross-Q. 34. Did you live in that house with him?

A. I did.

Cross-Q. 35. How long did you live in that house with him?

A. From the fall of 1867 till the spring of 1868.

Cross-Q. 36. Did you ever talk through the machine with him or hear him talk through it?

A. No, sir.

Cross-Q. 37. Where was your father living in 1872?

[*Objected to as not proper cross-examination, as the question relates to new matter not inquired about in the direct examination.*]

A. At Highspire, Dauphin county, Pa.

Cross-Q. 38. Who lived with him at that time?

[*Same objection.*]

A. My mother and my two sisters.

Cross-Q. 39. What were the names of the two sisters?

[*Same objection.*]

A. Maggie, (now Mrs. Brenneman,) and Annie.

Cross-Q. 40. Did Mrs. Brenneman live with your father after she was married, and if so, how long?

[*Same objection.*]

A. She lived with him, but I can't say how long.

Cross-Q. 41. Mr. Brenneman, in his 5th answer, testified: "I lived with my father-in-law from 1872 till the spring of 1875;" is that according to your recollection?

[*Same objection.*]

A. I couldn't say; I know they lived there a while, but I couldn't say how long.

Cross-Q. 42. Did both she and her husband live there during that time until they moved away, or did she live there without her husband?

[*Same objection.*]

A. They both lived there together.

Cross-Q. 43. When she moved away from there where did they move to?

[*Same objection.*]

A. I think, into Mr. Hoffer's house, in Highspire.

Cross-Q. 44. About how long did they live there, and where did they move to next?

[*Same objection.*]

A. That is more than I am able to say.

Cross-Q. 45. Did they live at Mr. Hoffer's house quite a short time or for some years?

[*Same objection.*]

A. I don't think more than a year; I won't be positive, though.

Cross-Q. 46. Where did she move to next?

[*Same objection.*]

A. I think to Steelton.

Cross-Q. 47. About how long did she live there?

[*Same objection.*]

A. I can't say.

Cross-Q. 48. Where did she go to when she moved away from Steelton?

[*Same objection.*]

A. I think to Harrisburg; I won't be positive.

Cross-Q. 49. Where did she live in Harrisburg?

[*Same objection.*]

A. I don't know.

Cross-Q. 50. About how long did she live there—quite a short time, or a very long while?

[*Same objection.*]

A. I can't say how long.

Cross-Q. 51. Did you ever see her while she lived there?

[*Same objection.*]

A. A few times.

Cross-Q. 52. When she moved away from Harrisburg where did she go?

[*Same objection.*]

A. To the west.

Cross-Q. 53. About how long did she live in the west?

[*Same objection.*]

A. I am not able to say how long.

Cross-Q. 54. What is your recollection about it—was it a short time, or some years?

[*Same objection.*]

A. I think about two years, as near as I can tell.

Cross-Q. 55. When she came back from the west where did she go to live?

[*Same objection.*]

A. The first time she came back was in July, 1882, and she came here to me, and was here three weeks. Then she moved to Harrisburg from my place again. Then she went back to the west again in September, 1882. Her husband came in and took her out. She then came back when you folks brought her back.

Cross-Q. 56. When was that?

[*Same objection.*]

A. I can't tell how long it was. Yesterday, I think, it was two weeks since she came in.

Cross-Q. 57. And you understand that she was brought in from the west to testify, do you?

[*Same objection.*]

A. Yes, sir; that is my understanding.

Cross-Q. 58. Did she ever live in Paterson, New Jersey?

[*Same objection.*]

A. Indeed, I don't know.

Cross-Q. 59. Her husband's failure to support her and her children and his treatment of her has caused considerable anxiety or feeling in the family, has it not?

[*Same objection, and objected to as wholly irrelevant, immaterial, and incompetent.*]

A. I know nothing about their family affairs.

Cross-Q. 60. It has caused considerable anxiety and feeling on the part of her mother, yourself, and your husband, has it not?

[*Same objection.*]

A. It has, a little.

Cross-Q. 61. When she came on from the west and came here to your house, she lived on the kindness of your husband and yourself, because you felt her husband didn't properly care for her; is not that the fact?

[*Mr. Jacobs, whilst he cannot prevent counsel from asking questions in violation of the elementary rules of evidence, protests against this line of examination for the reasons above stated, and because no fact has appeared in the case to warrant counsel in pursuing it.*]

A. I think one cared for the other as much as the other cared for the one. They are both blest with good tempers. I have nothing to say against either of them.

Cross-Q. 62. You and your husband took her in and cared for her, because you felt that her husband didn't properly care for and support her and her children; is not that the fact?

[*Same objection.*]

A. She came in here on a visit.

Cross-Q. 63. I think you understand my question perfectly well. I wish you would answer it.

[*Same objection.*]

A. She came here on a visit when she came here, and we didn't take her in nor nothing; she just came here on a visit.

Cross-Q. 64. Your husband finally insisted that she and her children should leave your house, because he considered that her husband was able to take care of her and ought to be compelled to; is not that the fact, and did she not go away under those circumstances?

[*Same objection.*]

A. He insisted on her going out to him again.

Cross-Q. 65. And for the reason that her husband ought to support her, and not your husband, was it not?

[*Same objection.*]

A. My husband thinks each man has enough to do to support his own family; that is what he told her.

Cross-Q. 66. And the night when she and her children left your house they went and stayed with a colored woman in the village, did they not?

[*Same objection.*]

A. They didn't leave at night; they left in the afternoon.

Cross-Q. 67. That first night after leaving they spent with a colored woman in the village, did they not?

[*Same objection.*]

A. Yes, sir.

Redirect by Mr. Jacobs, de bene esse.

Q. Q. 68. Is Mrs. Brenneman your full sister?

A. No, sir; a half sister; we have the same father, but different mothers. My mother is dead.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 3d day of November, 1883.

FRED. M. OTT,
Examiner.

MRS. JENNIE M. BROWN.

Adjourned until Monday, November 5, 1883, at 10 A. M.

HARRISBURG, *November* 5, 1883, 10 *A. M.*

Examination resumed. Present, Mr. Storrow and Mr. Howson, for complainants, and Mr. Hill and Mr. Jacobs, for respondents.

JACOB MILEY, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

My age is fifty-four; residence, Fairview township, York county, Pa.; occupation, farmer.

Q. 1. How long have you lived on the farm which you now occupy?

A. Seventeen years; it will be eighteen next spring.

Q. 2. Last winter, at Philadelphia, a witness was examined on behalf of complainants in this case who testified that his name was John F. Hursh, his age fifty-four, his residence Pawnee county, Kansas, his occupation forming and stock-raising; that he formerly resided in Fairview township, York county, Pa., and had a farm there on the banks

of the Yellowbreeches, and that he was formerly a member of the Drawbaugh Pump Company, which made the Drawbaugh faucets and other things at the machine shop at Milltown twelve or fifteen years ago. Do you know that Mr. Hursh personally? If so, how long have you known him?

A. I have known him at least thirty-five years.

Q. 3. Do you know Mr. Daniel Drawbaugh of Eberly's Mills, Cumberland county, Pa.; and if so, how long have you known him?

A. I have known him personally—that is, I don't know him intimately—have never done business with him—I have known him for about eighteen years; I have had conversation with him.

Q. 4. Were you ever in his shop at Eberly's Mills?

A. Yes, sir; not lately.

Q. 5. Can you tell me about when it was that Mr. John F. Hursh moved away from Fairview township to Kansas?

A. Four years this fall, to the best of my recollection.

Q. 6. That would be the fall of 1879, would it not?

A. 1879; yes, sir.

Q. 7. State whether that Mr. John F. Hursh ever did or did not say anything to you about an invention of Mr. Daniel Drawbaugh's, called the talking-machine.

A. Yes, sir; he did.

Q. 8. Please tell us how long ago Mr. Hursh first mentioned that talking-machine to you.

A. To my best recollection, it is eight or ten years ago—in 1873, 4, or 5—along there; I couldn't say now which of the three. It is from eight to ten years ago, anyhow; it is not less than eight and may be ten years ago.

Q. 9. Tell us the circumstances under which Mr. Hursh happened to mention that machine to you at that time—how it happened and what he said about it.

A. He came to my place—in the week, Thursday or Friday—and asked me to go with him to Mr. Hertzler's and Drawbaugh's on a Sunday; and the weather being bad on that Sunday, we didn't get going. He had stated to me that Mr. Drawbaugh was working at a speaking-machine or talking-machine; that is what he called it—talking-machine. That is about all—we didn't get to see it.

Q. 10. When he invited you to go with him to Mr. Hertzler's and

Mr. Drawbaugh's on that occasion, did he say anything about your going to see Mr. Drawbaugh's talking-machine? If so, what?

A. He said we would go and see it—see what it looked like, or something to that amount; I can't recollect the words exactly.

Q. 11. Did he give you any idea as to what the machine was to be used for? If so, what idea?

[*Objected to as leading, as the subject has already been fully inquired of.*]

A. For talking from one place to another.

Q. 12. Do you remember whether or not at that time when you had that conversation with Mr. Hursh, the old Drawbaugh faucet and pump company, of which Mr. Hursh was formerly a member, was still carrying on its manufacturing operations at Milltown? Please give us your best recollection and belief on that subject.

[*Same objection, and objected to because it does not confine the answer to the witness' actual knowledge.*]

A. I know nothing about their carrying on. I think Mr. Hursh had a kind of an interest in there, at the time yet that he spoke to me, in something.

Q. 13. Did you get that idea from Mr. Hursh's conversation at that time?

[*Same objection.*]

A. Not just at that time; I knew that he had an interest, but he didn't tell me just at this time; I didn't ask him the question, neither.

Q. 14. How near to Mr. Hursh's residence at that time did you live?

A. We adjoined farms.

Q. 15. Were you pretty intimately acquainted with him then or not?

A. Yes, sir; we were intimate neighbors, well acquainted, and relations along with that.

Q. 16. What relation?

A. My wife and he are first cousins.

Q. 17. Did you ever have any talk with Mr. Daniel Drawbaugh about his talking-machines? If so, how long ago for the first time, and how happened you to have that conversation?

A. He mentioned something to me about his—speaking-machine he called it. It was in about the same time—from eight to ten years ago; it may not be ten years, but it is full eight, I know. He was coming with me from Mechanicsburg to Shiremanstown—I don't remember that

he come any further—and on the way he spoke to me about his clock and speaking-machine.

Q. 18. Did he invite you to come to his shop and see them, or not?

[*Same objection.*]

A. He invited me to come and see them.

Q. 19. Do you remember about what time of day it was when you and Mr. Drawbaugh started for Mechanicsburg towards Shiremanstown?

A. It was about seven or eight o'clock in the evening.

Q. 20. Where was Mr. Drawbaugh living at that time?

A. That I do not know, but he had his shop at Milltown.

Q. 21. How far is your farm, in Fairview township, from Mr. Drawbaugh's shop at Milltown?

A. Three and a half or four miles.

Q. 22. Did you ever know anything about Mr. Drawbaugh's living one year in Mechanicsburg?

A. No, sir.

[*Each and every question, from question* 17 *inclusive, objected to as not in rebuttal.*]

Cross-examination, de bene esse, by Mr. Howson:

Cross-Q. 23. You have been living on one and the same farm for seventeen or eighteen years last past, I understand?

A. Eighteen years this next spring.

Cross-Q. 24. And Mr. John F. Hursh occupied the farm next to yours for many years before moving to Kansas, didn't he?

A. Yes, sir.

Cross-Q. 25. And it is a good many years ago now, I suppose, that you married Mr. Hursh's first cousin?

A. Twenty-six or seven years ago; I can't tell exactly.

Cross-Q. 26. You have told us about traveling with Mr. Drawbaugh from Mechanicsburg to Shiremanstown, and about his talking to you about clocks and the talking-machine. What was it he told you about his clocks?

A. He told me he was working at a clock, or had it about completed. I don't know how he stated it to me, but it run without winding; that was the idea.

Cross-Q. 27. Is that all you now recollect on that subject?

A. That is all concerning the clock; yes, sir.

Cross-Q. 28. I suppose he talked to you about other things besides the clock and the talking-machine?

A. Nothing particular, excepting the speaking-machine, as he called it.

Re-direct by Mr. Hill.

Q. Q. 29. Do you remember in what month it was that you had that conversation with Mr. Drawbaugh going to Shiremanstown?

A. In January—the first Saturday in January.

Q. Q. 30. How do you know it was the first Saturday in January?

A. I belong to a horse-thief-detective company that meets there on the first Saturday of January of every year; and I was going to the meeting.

Q. Q. 31. How long have you been a member of that company and accustomed to meet with them at their annual meetings?

A. I have belonged to them some eighteen or twenty years; I hardly ever miss a meeting.

[*Each and every question and answer objected to by Mr. Storrow as not in rebuttal.*]

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 5th day of November, 1883.

FRED. M. OTT,
Examiner.

JACOB MILEY.

Adjourned until 2.30 P. M., to take deposition of Mrs. Emiline Natcher, at Carlisle, Cumberland county, Pa.

CARLISLE, *November* 5, 1883, 2.30 *P. M.*

Examination resumed.

Present, same counsel.

EMILINE NATCHER, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

Q. 1. Please state your name and residence.

A. Emiline Natcher; residence, Carlisle, Cumberland county, Pa.

Q. 2. Are you the wife of William Natcher, who testified as a witness in this case?

A. Yes, sir; I am his wife, but we don't live together.

Q. 3. When did you and your husband move away from Eberly's Mills?

A. In October, 1872.

Q. 4. Have you ever lived at Eberly's Mills since that time or not?

A. No, sir.

Q. 5. Do you know Mr. Daniel Drawbaugh, of Eberly's Mills; and if so, how long have you known him?

A. Yes, sir; since 1870, the first time we moved to the mill; I knew him then; but the second time we moved back we were very intimate.

Q. 6. If I understand you correctly, the second time you moved back was before the fall of 1872; was it not?

A. It was 1872; we moved away in the fall of 1872.

Q. 7. While you lived there at Eberly's Mills, did you ever hear anything said about Drawbaugh's talking-machine or not?

[*Objected to as new matter not in rebuttal, and also objected to as leading.*]

A. Yes, sir.

Q. 8. While you lived there, was his talking-machine a good deal talked about in the community, or not?

[*Same objection.*]

A. Yes, sir.

Q. 9. Was it well known in your family, or not?

[*Same objection.*]

A. In our family—yes, sir.

Q. 10. Did you ever, at that time, while you lived there, hear any of your children speak about seeing it, or talking into it, or not?

[*Same objection.*]

A. Yes, sir.

Q. 11. Which ones of your children?

[*Same objection.*]

A. George and Bella—and Michael spoke of it, too.

Cross-examination, de bene esse, by Mr. Storrow:

Cross-Q. 12. What did Michael say of it?

A. Michael said that Mr. Leonard said it would be a very nice thing to have it to talk from the mill to the house.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 5th day of November, 1883.

FRED. M. OTT,
Examiner.

EMELINE NATCHER.

MRS. BLANCHE BELLE SPANGLER, *being produced, affirmed, and examined, saith:*

Examined by Mr. Hill:

My name before I was married was Blanche Belle Natcher; my residence is North street, Carlisle, Cumberland county, Pennsylvania; I am twenty-two years of age; my husband's name is Edward Spangler.

Q. 1. Are you the daughter of William and Emeline Natcher, who have testified in this case?

A. Yes, sir.

Q. 2. How old were you when your father and his family moved away from Eberly's Mills?

A. Just nine years old.

Q. 3. Did you live at Eberly's Mills with them?

A. Yes, sir.

Q. 4. They moved away from Eberly's Mills in 1872. Will you please state whether you have or have not ever been in Eberly's Mills since your father moved away from there?

A. No, sir.

Q. 5. When you were a little girl living at Eberly's Mills, did you know Mr. Daniel Drawbaugh?

A. Yes, sir.

Q. 6. Did you or did you not ever hear of Daniel Drawbaugh's talking-machine?

A. Yes, sir; I heard of it, and also talked in it.

Q. 7. Where were you living when you heard of it and talked in it?

A. With my father at Eberly's Mills, in the house opposite the mill.

Q. 8. Do you recollect any particular circumstance connected with your talking in the talking-machine—how you got to it to talk in it? If so, please state.

A. Do you mean what my words were that I spoke in it?

Q. 9. No; how you got to it.

A. Harm. Drawbaugh lifted me up to it.

Q. 10. Do you remember whether or not you heard Mr. Drawbaugh's talking-machine frequently spoken of while you lived in Milltown?

A. By the children, a great deal.

Q. 11. Did Mr. John C. Comfort ever talk to you in regard to your knowledge of Mr. Drawbaugh's machine?

A. Yes, sir.

Q. 12. Was that before or after your father testified for the Bell Telephone Company?

A. It was afterwards; he was speaking to my father first; and after he was through with father, he spoke to me.

Q. 13. I think you did not understand my question; I referred to the time when your father went down to Harrisburg to testify—about a year ago last summer; did Mr. Comfort speak to you before or after your father first went down to Harrisburg to testify?

A. Before he ever went to Harrisburg; it was the evening he came here to see him about it.

Q. 14. During that conversation with Mr. Comfort, did you or did you not tell Mr. Comfort that you had seen and talked into Mr. Drawbaugh's talking-machine when you were a little girl living in your father's family at Eberly's Mills?

A. I did.

Q. 15. What did Mr. Comfort say when you told him that?

A. He asked me if I was sure, and what it looked like.

Q. 16. What did you reply?

A. I told him I didn't know what it looked like, but that I knew it was a hole that I spoke through.

Q. 17. What did he say to that?

A. He asked me if I was called up if I could swear that it was something to talk through; I told him it was.

Q. 18. What else did he say?

A. He asked me if I was ever in Dan Drawbaugh's house.

Q. 19. I mean what else did he say about the talking-machine?

A. He asked me if I got an answer, and whether I seen wires attached to it; I told him I didn't.

[*Each and every question and answer objected to as not in rebuttal.*]

Cross-examination by Mr. Storrow, de bene esse:

Cross-Q. 20. After you had got through with the talk which you had with Mr. Comfort, your father took his account-book, and he and Mr. Comfort went off to the hotel together to see somebody else, didn't they?

A. Yes, sir.

Cross-Q. 21. It was one of the lawyers in the case that they went to see, wasn't it?

A. Yes, sir.

Cross-Q. 22. Your father was present while you and Mr Comfort were talking, was he not?

A. Yes, sir.

Cross-Q. 23. And that was about six or eight weeks before he testified, was it not?

A. I don't know just positive; I don't remember any more.

Cross-Q. 24. It was about the 1st of June, was it not?

A. I think it was about that month; I am not certain, but I know it was not long till father was sent for. I don't remember the date of the month any more.

Cross-Q. 25. Your mother and husband were also both present at this interview, were they not?

A. Yes, sir.

Examination taken, reduced to writing, and by the witness affirmed and subscribed to before me, this 5th day of November, 1883.

BLANCHE B. SPANGLER.

FRED. M. OTT,
Examiner.

Adjourned until November 6, 1883, at 10 A. M., at Harrisburg.

HARRISBURG, *November* 6, 1883, 10.25 *A. M.*

Examination resumed pursuant to adjournment.

Present, Mr. Storrow, and Mr. Howson, and Mr. Hill, and Mr. Jacobs, for respondents.

JACOB KIMMEL, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

My age is forty-three; residence, Mechanicsburg, Cumberland county,

Pa.; I have been a net-maker now for about the last four or five years; I was formerly a carpenter until the work got too heavy for me.

Q. 1. Do you know Daniel Drawbaugh, of Eberly's Mills, Cumberland county, Pa.?

A. Yes, sir.

Q. 2. Do you know Samuel F. Hauck, of Mechanicsburg, a hardware merchant and manufacturer of fly nets.

A. Yes, sir.

Q. 3. Do you know David A. Uhrich, who lives about three and a half miles south-west of Mechanicsburg, in the direction of Dillsburg?

A. Yes, sir.

Q. 4. Mr. Samuel F. Hauck was examined as a witness for complainants in this case, and his deposition is printed in complainants' rebutting record, pages 1160 to 1176 inclusive, and again on re-call for further cross-examination, pages 1180 and 1181, and again on re-call for re-direct examination, pages 1182 to 1184 inclusive. On pages 1180 to 1184, he was examined among other things with reference to the question whether he ever was with you and David A. Uhrich together in Mr. Drawbaugh's shop, at Eberly's Mills; and he testified that he had no recollection of ever being in that shop with you and Mr. Uhrich together. He further testified (see page 1182) that he was there at that shop once with you and Mr. David McIlhenny together. He further testified (see ans. 27, page 1164, and ans. 2, page 1180,) that Mr. Drawbaugh never, at any time, said anything to him (Samuel F. Hauck) about telephones or talking-machines, and he never saw any at his (Drawbaugh's) place. He further testified (see ans. 3, page 1182) that the time when he saw you there at Drawbaugh's shop was in or about January, 1879; that David Hauck was present; that he thought David McIlhenny and you drove down to Eberly's Mills that day in a sleigh; and that he saw a fire-alarm at Mr. Drawbaugh's shop that day, but did not see any telephones.

Referring now to the occasion when Mr. Hauck says that he, (Samuel F. Hauck,) was present in Mr. Drawbaugh's shop with David Hauck, Jacob Kimmel, and David McIlhenny, in or about January, 1879, will you please state whether you remember that visit to Mr. Drawbaugh's shop, and the fact of the two Haucks and Mr. McIlhenny being there with you at the same time?

A. Yes, sir; the two Haucks I am satisfied about. As far as McIlhenny is concerned, I am not just so positive about him; I think he

was there; but I am not positive. Other parties had gone down there with me, too.

Q. 5. Will you please state whether or not you were ever present in Mr. Daniel Drawbaugh's shop with this Mr. Samuel F. Hauck and David A. Uhrich together?

A. Yes, sir.

Q. 6. Can you give us any idea how long ago it was, or in what year it was, that you, and Samuel F. Hauck, and David A. Uhrich were present together in Mr. Daniel Drawbaugh's shop, at Eberly's Mills?

A. I can't exactly; I think it was in 1877, to the best of my knowledge; I can't tell positively, though, so far as the date is concerned.

Q. 7. The occasion when you, and Mr. Samuel F. Hauck, and Mr. David A. Uhrich were present together in Mr. Drawbaugh's shop was, if I understand you, a different occasion from that when you, and Mr. Samuel F. Hauck, Mr. David Hauck, and Mr. McIlhenny were present there together; am I correct or not?

[*Objected to as leading.*]

A. Yes, sir.

Q. 8. When you, and Mr. Samuel F. Hauck, and Mr. David Uhrich were present together in Mr. Drawbaugh's shop, at Eberly's Mills, will you tell us whether Mr. Daniel Drawbaugh did, or did not, show the party a talking-machine or telephone?

A. He did; I don't know whether he called it a talking-machine or a telephone, though.

Q. 9. Did Mr. Samuel F. Hauck see that talking-machine or telephone at that time, or not?

A. He seen it the time I met Dave Uhrich and him there—the time we met there.

Q. 10. Do you remember whether at that time while you, Mr. Samuel F. Hauck, and Mr. Uhrich were looking at the talking-machine or telephone there was any conversation between Mr. Samuel F. Hauck and Mr. Drawbaugh about the machine or not?

A. They were talking about the machine; I don't know whether it was a conversation just between Mr. Drawbaugh and Mr. Hauck; there were four of us in the room—may be five.

Q. 11. Do you mean that all of you who were in the room were taking part in the conversation about the machine?

[*Objected to as leading.*]

A. We were all looking and Dan was explaining; I was on the outside and being a little taller than the rest I could look over them; I didn't examine them much for my part, or examine it, rather; I rather think I stood behind Hauck; I wouldn't just be positive about that.

Q. 12. You stood behind some of the party and looked over their shoulders while Mr. Drawbaugh was explaining the machine to them did you?

[*Objected to as leading.*]

A. Yes, sir.

Q. 13. While Mr. Drawbaugh was explaining the machine to them do you remember whether he did or did not take it apart and show them the inside of it?

[*Objected to as leading.*]

A. To the best of my knowledge he took it apart.

Q. 14. Do you remember anything that Mr. Samuel F. Hauck and Mr. Drawbaugh said to each other on that occasion when you and Mr. Urich were present with them? If so, please state what it was.

A. Mr. Hauck had asked Mr. Drawbaugh for a telephone or talking-machine to take along home to put up—whether at his house or at his place of business I don't know—and Mr. Drawbaugh said he didn't have any.

Q. 15. That conversation took place there while you and Mr. Uhrich were present, did it?

A. Yes, sir.

Q. 16. Can you tell us whether at or before that time you ever had or had not heard of speaking telephones being in public use in this country?

[*Objected to as calling for testimony too vague and uncertain under the circumstances.*]

A. I never heard, to the best of my knowledge.

[*The whole deposition objected to by Mr. Storrow as relating to matters wholly collateral and immaterial.*]

Cross-examined, de bene esse, by Mr. Storrow:

Cross-Q. 17. Will you state everything else you remember that took place at Drawbaugh's shop during the visit with Mr. Uhrich that you have testified about?

A. That is all that I know of.

Cross-Q. 18. How long were you there that day?

A. I can't tell you that exactly; I might have been there an hour, and I might have been there three or four hours. I rather think I wasn't there so long that day, as it was cold. I hardly remember whether it was that day that it was so cold or the day I met Davy Hauck and Sam there; one of those days was very cold, and the snow was drifted badly, and I didn't stay long.

Cross-Q. 19. You have mentioned two visits to Mr. Drawbaugh's shop; were you ever there at any other time?

[*Objected to as new matter not referred to in direct examination.*]

[*Question withdrawn by Mr. Storrow on account of the objection.*]

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 6th day of November, 1883.

FRED. M. OTT,
Examiner.

JACOB KIMMEL.

Recess from 12, M., to 2, P. M.

Examination resumed at 2.15 P. M.

JACKSON FREE, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

My age is fifty-four; residence, White Hill station, Cumberland county, Pa.; occupation, farmer; I am in the coal busines, too.

Q. 1. Are you the owner of the warehouse at White Hill station, alongside of the railroad?

A. Yes, sir.

Q. 2. How long have you owned that warehouse?

A. I moved there in the spring of 1866, and have owned the warehouse ever since that time?

Q. 3. Did the firm of Zacharias & Co. at one time rent that warehouse from you and use it in their busines?

A. Yes, sir.

Q. 4. When did they cease to hold and occupy that warehouse?

A. They left off business there in 1875, about the first of September.

Q. 5. State whether they ever have, or have not, at any time since the first of September, 1875, occupied that warehouse.

A. No, sir.

Q. 6. Is there a coal-yard connected with that warehouse?

A. Yes, sir.

Q. 7. When they left, about the first of September, 1875, did they leave anything there?

A. I bought some coal they had on hand.

Q. 8. You took what coal they had on hand there at that warehouse, did you?

A. Yes, sir.

Q. 9. What did you do with the coal?

A. I sold them afterwards.

Q. 10. Have you got any book of original entries here that will show the time when you sold parts of that coal?

A. Yes, sir; I have.

Q. 11. Will you please produce it and point out the entries relating to your sale of that coal?

A. Yes, sir; here it is. (Witness produces book.)

"105

1875	White Hill, Sept 6		cre
	Mr. Rudy		
Sept 6,	To 974 lbs of coal		
	By cash	2.06	2.06
" 7	Samuel Myers		
	to 3000 lbs of coal		
	By cash	6.00	6.00
	Martin Bricker		
	594 lbs of coal		
	By cash	1.25	1.25 "

Other entries follow these relating to the same matter. Of course I bought coal afterwards, but these first entries relate to the coal I bought from Zacharias & Co. The first three entries are in my handwriting and the others in that of my son. I can't say positively whether all the entries are of that coal or not, but the first three entries are. I am not certain whether the entries after the first three are all in the handwriting of my son. There are some down in the lower part of the page that are in my handwriting.

Q. 12. Who were the parties who constituted the firm of Zacharias & Co.?

A. Samuel Zacharias, Sr., Samuel Zacharias, Jr., and Eli Graybill.

Q. 13. Before the firm of Zacharias & Co. was formed was there a firm known as Zacharias & Son?

A. Yes, sir.

Q. 14. And when Mr. Graybill came in the firm name was changed to Zacharias & Co., was it?

A. Yes, sir; Zacharias & Co.; I believe that is the way they had it.

Q. 15. While the firm of Zacharias & Co. rented or occupied your warehouse who kept the rent accounts—you or they?

A. They kept the accounts, and when I bought things from them they charged them up and credited me with the rent. I kept no account myself.

Q. 16. Referring to these three entries in your book that have just been copied on to the record in your deposition, was this first entry of a sale to Mr. Rudy written down in this book on the day when the coal was sold to Mr. Rudy, or not?

A. Yes, sir; I generally charge right up whenever the coal is sold —the weight right to the books—always.

Q. 17. Was that first sale of coal to Mr. Rudy, which is shown by the book to have been made September 6, 1875, made before or after Zacharias & Co. surrendered the warehouse to you and ended their tenancy?

A. It was after they left there.

[*The whole deposition objected to because it does not appear to be either material or in rebuttal.*]

[*Cross-examination waived by Mr. Storrow.*]

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 6th day of November, 1883.

FRED. M. OTT,
Examiner.

JACKSON FREE.

ELIAS GRAYBILL, *being produced, affirmed, and examined, saith:*

Examined by Mr. Hill:

My age is sixty-nine; residence, White Hill, Cumberland county, Pa.; occupation, day-laborer.

Q. 1. Were you formerly engaged in the mercantile business?

A. Yes, sir.

Q. 2. Were you a partner in a mercantile firm?

A. Yes, sir.

Q. 3. What was the firm name of the firm in which you were a partner?

A. Zacharias & Co.

Q. 4. What were the names of your partners in that firm?

A. Samuel Zacharias, senior, and Samuel M. Zacharias, a son of Samuel Zacharias, senior.

Q. 5. Mr. Jackson Free has just testified that the firm of Zacharias & Co., formerly rented a warehouse from him, situated at White Hill station; was it your firm that occupied that warehouse of Mr. Free's?

A. Yes, sir; after I went in. I went into the firm in the spring of 1869.

Q. 6. What was the name of the firm before you went into it?

A. Zacharias & Son.

Q. 7. Did Zacharias & Son occupy that warehouse before you went into the firm?

A. Yes, sir.

Q. 8. Up to what time did your firm continue to occupy that warehouse, and when did you leave it?

A. September, 1875.

Q. 9. Did you or your firm ever occupy it afterwards or not?

A. No, sir.

Q. 10. When you left the warehouse in September, 1875, did you make sale of anything there to Mr. Jackson Free? If so, what?

A. The office furniture and some coal we sold to Mr. Free.

Q. 11. Do you know Daniel Drawbaugh, of Eberly's Mills, Cumberland county, Pa.? If so, how long have you known him?

A. I have known of Mr. Drawbaugh long, but got acquainted with him in 1869.

Q. 12. Will you tell us whether Mr. Drawbaugh ever did or did not apply to you to put some money into his talking-machine invention?

[*Objected to as leading, also as new matter not in rebuttal.*]

A. He did.

Q. 13. Was that before or after you gave up the warehouse at White Hill station, in September, 1875?

[*Same objection.*]

A. Before.

Q. 14. Have you any idea how long it was before you gave up the warehouse?

[*Objected to as not in rebuttal.*]

A. No: I couldn't exactly say how long before, but it was in the same year, in the fore part of the summer, if my memory serves me right.

Q. 15. Where did the conversation take place between you and Mr. Drawbaugh when he asked you to put some money into his talking-machine invention?

[*Same objection.*]

A. Opposite the station-house, at White Hill.

Q. 16. Did Mr. Drawbaugh then tell you how much money he wanted you to put in? If so, how much did he say?

[*Same objection.*]

A. He said if he had a hundred and fifty dollars he could get it patented.

Q. 17. Did he tell you what he wanted the money for?

[*Same objection.*]

A. To get the telephone, as he called it then, patented.

Q. 18. Did he want you to go in with him and get it patented, or did he want to borrow the money?

[*Same objection, and also as leading.*]

A. My impression is that he wanted me to go in as a partner; he said nothing about borrowing.

Q. 19. Did you furnish him the money or not?

[*Same objection.*]

A. No, sir.

Q. 20. When he, at that time, asked you to put money into the machine and go in with him to get it patented, did he have one of his talking-machines with him or not?

[*Same objection.*]

A. He had.

Q. 21. Did he show it to you at that time or not?

[*Same objection.*]

A. He did.

Q. 22. Did he tell you what it was to be used for? If so, what did he tell you?

[*Same objection.*]

A. He told me it would transmit news by a wire attached to it.

Q. 23. Did he tell you how far it would transmit news—what did he say about that?

[*Same objection.*]

A. He said it would take the place of telegraph wires; we were just standing underneath them.

Q. 24. Did he show you how the instrument was to be used? I mean in that conversation about the money.

[*Same objection.*]

A. No, not to my recollection; but he was saying that by putting a wire to it he could talk any distance.

Q. 25. You say that he had the instrument with him and showed it to you; how did he carry it—in his pocket, in his hand, or how?

[*Same objection.*]

A. He had it in his hand when I first came to him.

Q. 26. Did he keep it in his hand or what did he do with it?

[*Same objection.*]

A. He either stuck it in his side pocket or put it under his coat; I am not certain whether he had a large pocket for it or not; but it would go in my pocket now—the thing that he had—if I had it with me.

Q. 27. Was it a large thing or a small one?

[*Same objection.*]

A. It was a good sized thing; I should think it was the size of a tin cup, or may be a little less.

Q. 28. Did he put it to his mouth during that conversation or not?

[*Objected to as grossly leading and as not rebuttal.*]

A. He held it up and showed that they would talk into it in that way when the wire would be attached; he held it up to his mouth to show me.

Q. 29. Will you please look at the machines now placed on the table before you, marked "A," "B," "C," "D," "E," "F," "G," "I," "L," "M," and "O," and tell us whether you do or do not find any that is about the size and shape of the instrument that Mr. Drawbaugh showed you at the time of that conversation about the money?—and if you do find any about the size and shape please pick it out and hand it to the examiner in order that he may certify the fact upon the record.

[*Objected to as not in rebuttal and not warranted by the preceding testimony of the witness, and as calling for testimony too vague and uncertain.*]

A. This one, [indicating "A,"] but I was under the impression that it was more square at the time he showed it to me; this here [indicating the mouth-piece of "A"] I am certain it had on, but I thought the one he showed me was more square.

Q. 30. Did you take it in your hands at the time or not?

A. That I don't recollect.

Q. 31. Do you know Mr. John C. Comfort, of Cumberland county?

A. Yes, sir.

Q. 32. Did you ever meet him at the Bolton House, Harrisburg, with any of the lawyers engaged on the side of the case that he is working for?

A. Yes, sir.

Q. 33. When was that, and how many times did you meet them there?

A. It was last August a year at the Bolton House—only once at the Bolton House; it was in August, for we were hauling out manure.

Q. 34. Do you mean in August, 1882?

A. Yes, sir.

Q. 35. How happened you to come over to the Bolton House on that occasion?

A. Comfort brought me over.

Q. 36. Did he bring you over to see the lawyers there?

A. That was my impression—that they were lawyers; he didn't say whether they were or not, and I didn't inquire; he brought me over to see them.

Q. 37. Did you tell them at the Bolton House that Mr. Drawbaugh had applied to you to put money into his talking-machine or not?

A. Yes, sir.

Q. 38. Did you tell them that that happened before your firm left Mr. Free's warehouse, at White Hill station, or not?

[*Objected to as leading.*]

A. I don't think there was anything mentioned, or asked or said about it's being before or not; I think I merely told them that he had made a proposition to me to go into it, and that they didn't inquire whether it was before or after we left the warehouse.

Q. 39. Did you ever have any conversation with Mr. John C. Comfort at White Hill station or that vicinity, about Drawbaugh wanting you

to go in with him on the talking-machine invention? If so, when was it?

A. That must have been in 1882, sometime in the fall.

Q. 40. Do you mean that you did have such a conversation with Mr. Comfort?

A. Yes, sir; to the best of my knowledge, it was in 1882; we were going home from market from Harrisburg.

Q. 41. In that conversation with Mr. Comfort, did you or did you not tell Mr. Comfort about Mr. Drawbaugh having applied to you to put money into the talking-machine invention and go into it?

A. Yes, sir.

Q. 42. At the same time, did you or did you not tell Mr. Comfort that that thing happened before you and your firm left the warehouse at White Hill?

A. Yes, sir.

Q. 43. What did Mr. Comfort say when you told him this?

A. He said it didn't; that he could get men to swear that there was no telephone before that time; I told him that that was an easy matter because a great many people never heard of it.

Q. 44. Tell us all that passed between you and Mr. Comfort on that occasion, so far as you remember it.

A. I told him that he might get a hundred; that that wouldn't change the matter so far as I was concerned; that is all.

Adjourned until November 7, at ten A. M.

NOVEMBER 7, 1883, 10.30 A. M.

Examination resumed, pursuant to adjournment.

Present, same counsel.

Examination of Elias Graybill by Mr. Hill suspended at this point to take the deposition of Charles I. Boyer, hereinafter printed.

Examination of Elias Graybill by Mr. Hill continued:

Q. 45. Referring to the conversation which you state you had with Mr. John C. Comfort on your way from Harrisburg to White Hill station, in 1882, was that conversation still going on when you arrived at White Hill station?

[*Former objections renewed, and also objected to as leading and assuming.*]

A. Yes, sir.

Q. 46. When you arrived there with Mr. Comfort, did you or did you not point out to Mr. Comfort the spot where you and Mr. Drawbaugh stood during the conversation between you and Mr. Drawbaugh about the money?

[*Same objection.*]

A. I did.

Q. 47. Referring now to the conversation with Mr. Drawbaugh himself about the money: when Mr. Drawbangh asked you to put in the one hundred and fifty dollars, how near did you come to doing it?

[*Objected to as not rebuttal.*]

A. I reached my hand in my pocket to pull the money out; and then rued again and didn't pull the money out—I rued bargain.

Q. 48. Did the firm of Zacharias & Co. afterwards fail in business?

[*Same objections, and also objected to as leading and assuming.*]

A. Yes, sir.

Q. 49. Can you give me the date when the sheriff took possession of their property at the time of their failure?

A. On the fifteenth of November, 1876.

Q. 50. If you have any book entry here which shows that date, will you please produce it in order that the examiner may certify it upon the record?

A. Yes, sir; here it is. [Witness produces book.]

"Nov. 15th, 1876; Sheriff took possession of the goods."

Q. 51. Whose handwriting is that entry in?

A. My own.

Q. 52. When did you write that memorandum in the book?

A. On the same day, if I ain't mistaken, or the day after.

Q. 53. When did you first begin to find out that your firm was getting into financial difficulties or financial stringency?

A. If I mistake not, it was either in March or April previous to that.

Q. 54. I see that this memorandum book which you have produced contains a sort of statement or memorandum of account commencing January 7, 1876, on the first page of the book, and running on in regular order to October 5, 1876, when the account seems to come to an end; the account occupying about twenty-one pages, which I judge to be six inches in length by three in width. Will you tell us what that account means, and why it was entered in the book?

A. When this book was commenced there was a receiver. Sam. M. Zacharias, Jr., gave the funds over to his brother as receiver, to receive this money in pay for money that his brother was responsible for. George A. Zacharias was the brother who was receiver. I was to keep account of what I sold, what I collected, and also paid out to the hands of any debt that I paid off. This is the account that I kept. I was to receive ten dollars per week for pay for my living.

Q. 55. I should judge from that receivership commencing as early as the 7th day of January, 1876, that the financial difficulties had begun at that time or before that time; how about that?

[*Objected to as leading and incompetent.*]

A. Yes, about that time.

Q. 56. Where were the operations of the firm carried on after they gave up the White Hill warehouse?

A. At Bridgeport.

Q. 57. How far is that from White Hill station?

A. About a mile or a little over a mile.

Q. 58. Did or did not the financial embarrassment and failure of that firm financially ruin you?

A. Yes, sir.

Q. 59. At the time when Mr. Drawbaugh asked you for one hundred and fifty dollars, and you put your hand in your pocket to get it, did you have the money in your pocket, or not?

[*Objected to as leading.*]

A. Yes, sir: if I hadn't enough there, I had in bank.

Q. 60. From and after the time when the receiver was appointed, what was your financial condition as to pocket-money and money in bank?

A. None in bank at Mechanicsburg, and very little in my pocket.

Q. 61. You have stated that when Mr. Drawbaugh wanted the one hundred and fifty dollars from you, he had with him one of his instruments for talking over a wire; did he or did he not ever show you his talking-machines at his shop at Eberly's Mills?

[*Objected to as not rebuttal and as leading.*]

A. Yes, sir.

Q. 62. When you saw them at his shop at Eberly's Mills, did anybody talk through them, or not?

[*Same objections.*]

A. Yes, sir.

Q. 63. Who talked through them, and who listened?

[*Same objections.*]

A. Daniel Drawbaugh talked through them and I listened.

Q. 64. In what part of the shop were you when you listened at the talking-machine, and in what part was he at the time, if you know?

A. He left. He says: "I'll go to the cellar," and I was up on the second story.

Q. 65. At what part of the second story were you?

A. In that back room—at the east side, I guess it would be—south-east corner.

Q. 66. When you were listening on the second story and he was talking in the cellar, did you hear and understand what he said through the talking-machine, or not?

A. Yes, sir.

Q. 67. Do you remember anything that he said through the machine at that time, and that you heard through the machine?

A. Yes, sir; he called out after he was done and said: "Now, I'll whistle for you."

Q. 68. Did you hear him whistle through the machine or not?

A. Yes, sir; very distinctly.

Q. 69. When he said "Now, I'll whistle for you," did he say that through the machine or not?

A. Yes, sir; he said that through.

Q. 70. If I understand your testimony rightly, Mr. Drawbaugh first talked through the machine to you, and you heard and understood through the machine what he said, and then he said through the machine: "Now, I'll whistle for you," which words you heard through the machine; and then he whistled, and you heard that through the machine; is that the way you wish to be understood, or not?

[*Objected to as leading and incompetent.*]

A. Yes, sir.

Q. 71. Did Mr. Drawbaugh ever talk through the machine to you at any other time than that, or not?

A. That was the only time.

Q. 72. Do you remember whether that time was before or after the failure of Zacharias & Co.

A. I think it was before; to the best of my knowledge it was before.

Q. 73. Do you think it was before or after the appointment of the receiver, in the early part of January, 1876?

A. I think it was before.

Q. 74. Was it before or after Mr. Drawbaugh showed you the machine at White Hill station, and asked you for the one hundred and fifty dollars?

A. It was after.

Q. 75. Do you think it was before or after your firm gave up the warehouse at White Hill station?

A. I think it was after we had given that up, and that I was at the lower house at Bridgeport.

[*The whole of the foregoing deposition objected to as new matter not in rebuttal, and further objection to so much of the deposition as purports to relate to alleged conversations between this witness and Mr. John C. Comfort, during the year* 1882, *or since, as incompetent, irrelevant, and immaterial; relating, as it does, to alleged declarations of this witness and others at periods since the commencement of this litigation, and since said litigation and the subject of it had become notorious.*]

Cross-examination, de bene esse, by Mr. Howson:

Cross-Q. 76. At what kind of day-labor are you engaged, and for whom?

A. At present at the stone cutters—at the labor of removing stone for the abutments of the Northern Central Railroad Company.

Cross-Q. 77. How long have you been at that?

A. I think it was the 27th of October—no, of September; I think I worked three days in September.

Cross-Q. 78. Your memory is not quite so good as it was at one time, is it, Mr. Graybill?

A. It is not as sharp, quite, as it was years ago.

Cross-Q. 79. Have you been working at removing stone to-day?

A. To-day? No, sir.

Cross-Q. 80. On what day were you at that last?

A. On Monday.

Cross-Q. 81. At what work were you engaged just before you went into your present employment?

A. Raising potatoes.

Cross-Q. 82. Where?

A. On Mr. Neidig's farm, for myself and Mr. Neidig.

Cross-Q. 83. Where is Mr. Neidig's farm?

A. At Lake Spring.

Cross-Q. 84. How far is that from White Hill station?

A. About a mile.

Cross-Q. 85. How long have you been living at White Hill?

A. I lived two years in White Hill; moved from it and returned and lived four years—returned, living there since April a year.

Cross-Q. 86. When and where did you last see Mr. Drawbaugh?

A. At the dinner-table was the last, to-day. No, I saw him since; down in Mr. Jacobs' office last.

Cross-Q. 87. Have you been in town here all day?

A. I was in this morning, and left, and returned.

Cross-Q. 88. When you say and talked through the machines at Mr. Drawbaugh's, where was the machine that you listened at placed?

A. In the room on the south-east corner of the shop.

Cross-Q. 89. A small room or large room?

A. A small room.

Cross-Q. 90. Whereabouts in the room was the machine?

A. If I mistake not it was in the corner—at the right-hand as you go in the door, as near as I can recollect.

Cross-Q. 91. How did you get to the room?

A. I went up stairs.

Cross-Q. 92. On what story of the building was this room?

A. I would call it the second story.

Cross-Q. 93. How long were you there on that occasion?

A. I couldn't exactly tell you; I was there a good while.

Cross-Q. 94. You say you went up stairs to this room; did you go directly into the room from the stairs?

A. No, sir.

Cross-Q. 95. How lately have you been in Mr. Drawbaugh's shop?

A. I can't say whether it was in the spring—early in the spring of this year, I think, I was in the shop.

Cross-Q. 96. When last before that?

A. I couldn't exactly say; I might have been in—I was in several times, but I can't recollect the exact time.

Cross-Q. 97. You have been there more than once, I suppose, within the last year or two?

A. Twice, to my recollection, within two years.

Cross-Q. 98. You have given us your recollection about one of those imes; give us your recollection as to the other time.

A. I couldn't tell exactly what time it was; I think I was in twice since we done the talking through the machines.

Cross-Q. 99. You have told us you have been there twice to your

recollection within two years; also, that one of those visits you think was early in the spring of this year. What I wish to know is, when, within the two years, the other visit occurred.

A. It was in the fall and I was fishing, and I called in at the shop.

Cross-Q. 100. You say it was in the fall—what fall?

A. This fall a year.

Cross-Q. 101. Did you see Mr. Drawbaugh both these times?

A. I saw him once; I am not sure about the second time.

Cross-Q. 102. How long were you there the second time?

A. I don't recollect.

Cross-Q. 103. Whom did you see?

A. George was there—I recollect him—and Mr. Heiges—I mean George Drawbaugh.

Cross-Q. 104. I suppose you had some talk with these gentlemen?

A. Yes, sir—with Daniel; he was making those spools he said for his talking-machine.

Cross-Q. 105. Then you had some little talk about talking-machines, of course?

A. Yes.

Cross-Q. 106. How far is Mr. Drawbaugh's shop from where you live?

A. I suppose a little over a mile.

Cross-Q. 107. White Hill, I believe, is the nearest station to Eberly's Mills, in going to and from Harrisburg, is it not?

A. Yes, sir.

Cross-Q. 108. You have told us that at the time you and Mr. Drawbaugh talked through the talking-machine, the machine you listened at was in a small room, at the south-east corner; how was it fixed as you recollect it—what did it rest on?

A. As near as I can recollect, I thought it was screwed up against the wall—against the partition like, as near as I can recollect.

Cross-Q. 109. How many rooms were there on that story, as you recollect, when you listened at the talking-machine?

A. I cannot say.

Cross-Q. 110. Is it your custom to come into Harrisburg to market every now and then?

A. Yes, sir.

Cross-Q. 111. It has been so, I suppose, for the last two or three years, or more?

A. Yes, sir.

Cross-Q. 112. And in that way you have frequent opportunities to meet and chat with neighbors living within a few miles of you?

A. Yes, sir.

Cross-Q. 113. What is your recollection as to the shape of the talking-machine which you say Mr. Drawbaugh showed you at White Hill station?

A. I can't exactly give you the shape; as to the mouthpiece—that is the most I have in my recollection—that was round, or rather oval, at that time.

Cross-Q. 114. Whereabouts in the room at Drawbaugh's shop were you when you heard the talking and whistling through the machine, as you supposed?

A. I was right at the machine.

Cross-Q. 115. Were you in any other room in the shop that day; and if yes, in what room of that shop?

A. As I came in I passed through the opening that was there. I can't say whether there was a door or not, as it was open and I passed into this apartment where the machine was in.

Cross-Q. 116. How far was that door from the door where you entered the building?

A. I couldn't tell the number of feet; I didn't measure it.

Cross-Q. 117. I don't ask you to state it exactly, but simply to give us your best recollection on the subject.

A. It might have been ten feet, or it might have been twenty, or it might have been thirty; I wouldn't have no recollection as to the exact distance at all.

Cross-Q. 118. Had you not quite a severe spell of sickness some time ago?

A. Three years ago this summer.

Cross-Q. 119. When you visited Mr. Drawbaugh's shop, this fall a year ago, did you find him there?

A. I can't say which of the times I saw him; I saw him once, but cannot say which of the last two times it was.

Cross-Q. 120. Whom, other than Mr. Drawbaugh, did you see at that visit?—I mean the visit this fall a year ago.

A. Mr. George Drawbaugh was in, and Mr. Heiges, to the best of my recollection.

Cross-Q. 121. What were they doing, if anything?

A. They appeared to be busy—both of them; I didn't notice what they were at.

Cross-Q. 122. What, if anything, do you recollect noticing there at that time?

A. At one time Daniel was working at those spools; he had a spool fixed on and was threading off of it.

Cross-Q. 123. What, besides that, do you recollect about either of those visits—either that of last fall or that of this spring?

A. Nothing.

Cross-Q. 124. On the occasion when you were at Mr. Drawbaugh's shop, and think that you heard through the talking-machine, who talked into it; or who was it that talked the things that you heard?

A. I supposed it was Daniel Drawbaugh.

Cross-Q. 125. Where was he at that time?

A. I understood him to say he would go to the cellar.

Cross-Q 126. Did you see the thing he talked into?

A. No, sir.

Cross-Q. 127. How near White Hill station do you live now?

A. Probably a hundred yards; may be a little more.

Cross-Q. 128. How long have you lived in that house?

A. Altogether, eight years—will be in the spring.

Cross-Q. 129. Eight years steadily?

A. No, sir.

Cross-Q. 130. In what years did you live there?

A. 1869 and 1870, 1876, 1877, 1878, 1879, 1882, and 1883. I think that would make the eight years, if I am not mistaken.

Cross-Q. 131. Where did you live during the other years?

A. A mile above it two years; a mile below White Hill three years

Cross-Q. 132. On whose farm was the house a mile above and what years did you live there?

A. Mr. George Rupp's, 1871 and 1872.

Cross-Q. 133. Was that the Silver Spring farm?

A. No, sir; Lake Spring.

Cross-Q. 134. On whose farm did you live the three years and what years were those?

A. It belonged to the Hummel heirs in common, 1874, 1875, and 1876, I suppose it would be.

Cross-Q. 135. What work did you do while you lived on that farm?

A. In the warehouse there.

Cross-Q. 112. And in that way you have frequent opportunities to meet and chat with neighbors living within a few miles of you?

A. Yes, sir.

Cross-Q. 113. What is your recollection as to the shape of the talking-machine which you say Mr. Drawbaugh showed you at White Hill station?

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A. As I came in I passed through the opening that was there. I can't say whether there was a door or not, as it was open and I passed into this apartment where the machine was in.

Cross-Q. 116. How far was that door from the door where you entered the building?

A. I couldn't tell the number of feet; I didn't measure it.

Cross-Q. 117. I don't ask you to state it exactly, but simply to give us your best recollection on the subject.

A. It might have been ten feet, or it might have been twenty, or it might have been thirty; I wouldn't have no recollection as to the exact distance at all.

Cross-Q. 118. Had you not quite a severe spell of sickness some time ago?

A. Three years ago this summer.

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A. I can't say which of the times I saw him; I saw him once, but cannot say which of the last two times it was.

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A. Mr. George Drawbaugh was in, and Mr. Heiges, to the best of my recollection.

Cross-Q. 121. What were they doing, if anything?

A. They appeared to be busy—both of them; I didn't notice what they were at.

Cross-Q. 122. What, if anything, do you recollect noticing there at that time?

A. At one time Daniel was working at those spools; he had a spool fixed on and was threading off of it.

Cross-Q. 123. What, besides that, do you recollect about either of those visits—either that of last fall or that of this spring?

A. Nothing.

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A. I understood him to say he would go to the cellar.

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Cross-Q. 127. How near White Hill station do you live now?

A. Probably a hundred yards; may be a little more.

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A. Altogether, eight years—will be in the spring.

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A. No, sir.

Cross-Q. 130. In what years did you live there?

A. 1869 and 1870, 1876, 1877, 1878, 1879, 1882, and 1883. I think that would make the eight years, if I am not mistaken.

Cross-Q. 131. Where did you live during the other years?

A. A mile above it two years; a mile below White Hill three years

Cross-Q. 132. On whose farm was the house a mile above and what years did you live there?

A. Mr. George Rupp's, 1871 and 1872.

Cross-Q. 133. Was that the Silver Spring farm?

A. No, sir; Lake Spring.

Cross-Q. 134. On whose farm did you live the three years and what years were those?

A. It belonged to the Hummel heirs in common, 1874, 1875, and 1876, I suppose it would be.

Cross-Q. 135. What work did you do while you lived on that farm?

A. In the warehouse there.

Cross-Q. 136. Have you lived on your present place ever since you left that farm?

A. Excepting one year. I moved back to my present place from the Hummel place and I have lived there ever since with the exception of one year.

Cross-Q. 137. What year was that and where did you live then?

A. 1880, on Mr. Musser's farm.

Cross-Q. 138. Was it while you were living there that you had your sickness?

A. Yes, sir.

By Mr. Storrow:

Cross-Q. 139. Do you think you remember talking to me when you came to the Bolton House to see a lawyer?

A. Yes, sir.

Cross-Q. 140. The talk we had there was chiefly about accounts and your partnership, was it not?

A. Yes, sir; and some other little matters.

Cross-Q. 141. When we had got through talking about the accounts and the partnership, and just before you went away, I asked you whether you knew anything about Drawbaugh's talking-machines, didn't I?

A. I don't whether that was that time or at the United States hotel.

Cross-Q. 142. Then your present recollection is that the talk about the talking-machines was at the United States hotel, is it?

A. It was at either one of those places.

Cross-Q. 143. And you couldn't undertake to say which, could you?

A. No, sir; I couldn't undertake to say which one it was, because at the time we talked about it, I told you that Daniel had approached me to give him the money, and that I had a mind to do it and afterwards rued it; now, it was at one of them places, but which one I won't be positive.

Cross-Q. 144. When was it that you saw me at the United States hotel?

A. If I mistake not, it was August a year ago.

Cross-Q. 145. What part of August a year ago did you see me at the United States hotel?

A. That I can't say what time, but I think it was in August.

Cross-Q. 146. Did you ever see me after that?

A. Yes, sir.

Cross-Q. 147. When and where?

A. In Harrisburg, at the United States hotel.

Cross-Q. 148. When?

A. It was after the first visit, but how long after I can't say.

Cross-Q. 149. What is your best recollection about it?

A. It might have been two months or maybe longer, or maybe not so long; I couldn't positively say.

Cross-Q. 150. Wasn't it six months?

A. As I said before, I can't say whether it was two, six, or what. I can't recollect the time how long it was after.

Cross-Q. 151. Now, wasn't it at that time that you first told me about Drawbaugh's asking you to help him, if you ever mentioned it at all?

A. As I said before, I wouldn't be positive at which place it was, but it happened at one of the places.

Cross-Q. 152. Now, isn't this the fact about it, that the second time you saw me, after we had got through our conversation about accounts, etc., I asked you what you knew about Drawbaugh's telephone, and you told me that he showed it to you once at White Hill station, and you didn't say anything about his asking you to help him, nor about your seeing it elsewhere?

A. I had no reason to tell him. So far as that statement goes, it is correct. I admit I didn't mention it to him. The statement is correct. I misunderstood it on the first reading.

[*The question having been re-read to the witness at request of Mr. Hill.*]

Cross-Q. 153. At that interview at the United States hotel, you told me that on the occasion when Mr. Drawbaugh showed you the talking-machine at White Hill, it was a square thing, and he came up with it strapped on his back, and you laughed at him, and asked him if he had got a peddler's pack, and he said, no, it was a talking-machine, and then took it off and showed it to you; didn't you tell me that in substance?

A. No.

Cross-Q. 154. Didn't you tell me that he came up with it on his back?

A. Never.

Cross-Q. 155. And you feel as sure about that as about anything else that you testified to?

A. Yes, sir.

Cross-Q. 156. While I was asking you about dates, you told me about Musser's farm, did you not?

A. Yes, sir.

Cross-Q. 157. And you told me about the long sickness you had there, did you not?

A. Yes, sir.

Cross-Q. 158. And about its being a bad place for malaria?

A. Yes, sir.

Cross-Q. 159. And you told me that your troubles after the failure of your firm, and your sickness, had troubled your memory very much, didn't you?

A. I might have told him so, but that has not impaired it to this day; I have got over that trouble now—weathered it through—I can remember anything now as well as I ever could.

Cross-Q. 160. How long did you carry on the warehouse at White Hill—from what year to what year?

A. From 1869 to September, 1875.

Cross-Q. 161. How near your warehouse did Mr. Jackson Free live during that time?

A. A short distance.

Cross-Q. 162. Do you mean a few hundred yards, or a half a mile, or what?

A. About sixty yards—only a short distance. I never measured it; it may be a little over sixty yards, or a little less.

Cross-Q. 163. How near to the White Hill station was your warehouse?

A. Quite close—catacornered across the track; a little more than across the track.

Re-direct by Mr. Hill:

Q. Q. 164. Did you have an interview with Mr. Storrow at the Bolton House?

A. Yes, sir.

Q. Q. 165. And did you have two interviews with him at the United States hotel?

A. Only one.

Q. Q. 166. At one of these interviews the subject of Mr. Drawbaugh's telephones was mentioned, but you can't say whether it was at the interview at the Bolton House or that at the United States hotel; is that the fact?

A. Yes, sir.

Q. Q. 167. At that interview, did you tell Mr. Storrow that Drawbaugh applied to you to help him with money about his talking-machine, and that at first you had a mind to, but afterwards rued it?

[*Objected to as leading.*]

A. Yes, sir.

Adjourned until November 8, 1883, at ten A. M.

November 8, 1883, 10 *A. M.*

Examination resumed pursuant to adjournment. Present, same counsel.

Re-direct examination of Elias Graybill, by Mr. Hill, continued:

Q. Q. 168. In answer to the 37th and 38th interrogatories, you testified that you told the lawyers at the Bolton House that Mr. Drawbaugh had applied to you to put money into his talking-machine, and that he had made a proposition to you to go into it. And in answer to the 167th interrogatory, you also state that you told Mr. Storrow that Drawbaugh applied to you to help him with money about the talking-machine, and that at first you had a mind to, but afterwards rued it. But in your answer to cross-question 152, you testified that when you had the talk with Mr. Storrow here in Harrisburg, you didn't tell Mr. Storrow anything about Mr. Drawbaugh's asking you to help him. Those statements are apparently in conflict. Will you please tell us once more what you did tell Mr. Storrow, if anything, about Drawbaugh's asking you to help him?

[*Objected to by Mr. Howson as leading and incompetent.*]

A. I don't know whether it was at the Bolton House or the United States hotel. At one of those places I told him that he had applied and that I had rued. I put that statement in—or you must have misunderstood me—the same in your examination as in his cross examination. I meant no conflict, but I said yesterday what I say to-day, that I told him in one of those conversations, but I won't say which one. At the same time I told him that if I was called on I would have to testify to the fact.

Q. Q. 169. Then, when Mr. Storrow, in his 152d interrogatory, made the statement that you didn't say anything to him about Drawbaugh's asking you to help him, and you testified that that statement of Mr. Storrow was correct, that you had no reason to tell him, and that you admit that you didn't mention it to him, did you, or did you not, understand Mr. Storrow's question yesterday? And I now ask the examiner to read that question and answer over to you, and I ask you to listen carefully to it, and see that you understand the question which

Mr. Storrow put to you, and that you take particular notice of what your answer was to Mr. Storrow's question, and explain to us how you came to answer it as you did.

[*Same objection.*]

A. That statement I didn't understand in that way. I had quite a different thinking over it. I certainly told Mr. Storrow that he had once applied to me for help and I had made up my mind to give him the money, and put my hand in my pocket to get him the money, and then when my hand was on my pocket-book I rued it, and thought that I hadn't money so plenty that I could afford to risk it, and so withheld it. That is certainly what I told Mr. Storrow at one of those places, and I told him that if I was called on that was what I would have to testify. I didn't understand that statement of Mr. Storrow in the question of yesterday. There was a misunderstanding somewhere.

Q. Q. 170. Since you left the stand here last evening, and before you commenced testifying here this morning, have you had any conversation with anybody with reference to your testimony here?

A. This morning Mr. Jonathan Fry and I—he asked me how I got along. The answer I made him was that they asked me about things so far around that I thought they had nothing to do with the case—about my moving and other things—that was about all the conversation we had. I had no other conversation except that last night when I got off the train at White Hill they asked me: "Well, are you through?" and I answered "No, not yet." I don't know who asked me as it was pretty full around there. I have had no conversation about it with anybody else.

Q. Q. 171. Until I just called your attention to it in my 168th interrogatory this morning, did you know that there was any apparent conflict in the testimony you gave yesterday about what you told Mr. Storrow?

A. I did not.

Q. Q. 172. If I understand your testimony yesterday correctly, you testified that you entered the firm of Zacharias & Co. in 1869 and live at White Hill station in 1869 and 1870; is my understanding correct?

A. Yes, sir.

Q. Q. 173. When you moved away from White Hill station at the end of that two years, where did you move to?

A. A mile above it in George Rupp's house.

Q. Q. 174. How long did you live in George Rupp's house, and what years?

A. Two years—1871 and 1872.

Q. Q. 175. When you moved away from George Rupp's house, where did you move to?

A. To the Hummel property.

Q. Q. 176. What years did you live on the Hummel property?

A. In 1873, 1874, and 1875, if I mistake not.

Q. Q. 177. When you moved away from the Hummel property, where did you move to?

A. Back to where I am now.

Q. Q. 178. What years did you live there before you moved again?

A. 1876, 1877, 1878, and 1879. In 1880 I moved again. My lease ran out on the first of April.

Q. Q. 179. When you moved away from there in April, 1880, where did you move to then?

A. To the Musser farm.

Q. Q. 180. How long did you live on the Musser farm, and when did you move away from it?

A. I lived there one year, and moved away in 1881.

Q. Q. 181. When you moved away in the spring of 1881, where did you move to?

A. To Mr. Harry Neidig's house, opposite the Rupp house that I formerly lived in.

Q. Q. 182. How long did you live in Mr. Harry Neidig's house, and when did you move away?

A. One year; I moved away in 1881—1882 I should say.

Q. Q. 183. When you moved away in the spring of 1882, where did you move to?

A. Back to White Hill.

Q. Q. 184. And have lived there ever since?

A. Yes, sir.

Q. Q. 185. It appears to be the custom of the country around about here to have leases of real estate commence to run on the 1st of April; did your leases generally run from the 1st of April to the 1st of April?

A. Yes, sir; all of them.

Q. Q. 186. Then, if I understand your testimony correctly, you lived at White Hill station from April, 1869, two years, to April, 1871; then in George Rupp's house from April, 1871, two years, to April, 1873; then on the Hummel property from April, 1873, three years, to April, 1876; then at White Hill station from April, 1876, four years, to April,

1880; then on the Musser farm, one year, from April, 1880, to April, 1881; then in Mr. Neidig's house from April, 1881, one year, to April, 1882; then at White Hill station again from April, 1882, to the present day, which is a little over a year and a half; is my understanding correct?

A. Yes, sir.

Q. Q. 187. Where is the Hummel property on which you lived?

A. A short mile below White Hill station.

Q. Q. 188. What do you mean by "below?"

A. This way—towards Harrisburg.

Q. Q. 189. How near is it to the warehouse which Zacharias & Co. occupied in Bridgeport?

A. It is only a short mile; it is about midway between the two warehouses.

Q. Q. 190. Bridgeport lies on the banks of the Susquehanna directly opposite Harrisburg, does it not?

A. Yes, sir.

Re-cross by Mr. Howson, de bene esse:

Re-cross-Q. 191. In your answer to interrogatory 36, in your testimony-in-chief, you testified that you visited the Bolton House to see gentlemen whom you took to be lawyers; there were two of them, were there not?

A. I don't know. I can recognize Mr. Storrow—this gentleman here—but I don't recollect of any more being in the room when I went in. They might have been, but I don't recollect.

Re-cross-Q. 192. The fact is, your recollection is quite uncertain about that; isn't that the case?

[*Question objected to by Mr. Hill, as the witness has already in his last answer stated that his recollection is uncertain as to how many gentlemen were present, if any, besides Mr. Storrow; and that if the question implies anything more than that, it should so state, in order that the witness may understand it clearly, and not be misled by it.*]

A. He is the only gentleman that I had any conversation with to my knowledge.

Re-cross-Q. 193. After stating in your answer to direct interrogatory 36, that you visited gentlemen whom you took to be lawyers, you were asked this question—interrogatory 37: "Did you tell them at the Bolton House that Mr. Drawbaugh had applied to you to put money into his

talking-machine, or not?" And you answered "Yes, sir." At the time you gave that answer, were you as positive as to the alleged fact set out in the question as you are about anything else that you have testified to here?

[*Objected to as improper, the witness having already stated in cross-examination that he was uncertain whether it took place at the Bolton House or the United States hotel.*]

A. I think the question is not a fair one, as I had answered that question once before. I mean that I answered the question—whether it was at the Bolton House or the United States—satisfactorily.

Re-cross-Q. 194. The examiner will read to you interrogatory 37, and your answer thereto; and I ask you whether, at the time you made that answer, you believed the question to be correct and true, both as to circumstance and place?

[*Objected to as before, and as simply badgering and trying to confuse the witness.*]

A. I didn't understand it; I told it yesterday that I didn't know whether it was the Bolton House or the United States hotel. You didn't put it down the way I gave it to you; that was my answer yesterday to that very question.

Re-cross-Q. 195. The answer which I have referred you to was given by you in your direct examination, day before yesterday, in answer to a question put to you by Mr. Hill. Your direct examination was continued during some time yesterday, and in it I found no reference whatever, either in questions or answers, to any interview with Mr. Storrow at the United States hotel. Now, what I wish to know is: whether, when you stated, in answer to Mr. Hill's 37th question, that you told them at the Bolton House that Mr. Drawbaugh had applied to you to put money into his talking-machine, you believed that statement to be true, both as to circumstance and place?

[*Same objection.*]

A. Have I not answered from the beginning that I didn't know whether it was at the Bolton House or the United States hotel? If it isn't in there, then you didn't understand me.

Re-cross-Q. 196. When did you say that?

A. In one of the interrogatories I said that I didn't know whether it

was at the Bolton House or the United States hotel. I certainly said it yesterday; if it isn't there it ought to be there, for I certainly said it.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 8th day of November, 1883.

FRED. M. OTT,
Examiner.

ELIAS GRABILL.

CHARLES I. BOYER, *being produced, affirmed, and examined, saith*

Examined by Mr. Jacobs:

My age is thirty-three; residence, Lisburn, Cumberland county, Pa.; occupation, iron master.

Q. 1. You run the Lisburn forge, do you not?

A. Yes, sir; the Liberty forge, near Lisburn.

Q. 2. When did you first take charge of that forge?

A. August, 1872.

Q. 3. By yourself or in partnership with others?

A. In partnership with Jacob E. Mumma, my brother-in-law.

Q. 4. To whom did the forge then belong?

A. To Israel L. Boyer, my father.

Q. 5. How long did Mr. Mumma continue in partnership with you?

A. Till some time in March, 1882.

Q. 6. Have you a partner now?

A. No, sir.

Q. 7. Do you know George Sipe?

A. Yes, sir.

Q. 8. Did he ever work for you, and if so, at what work?

A. He did; he worked for me in a coaling.

Q. 9. Coaling for the Liberty forge?

A. Yes, sir.

Q. 10. How near Lisburn is that forge?

A. One mile.

Q. 11. Along any creek? If so, what creek?

A. The Yellowbreeches creek.

Q. 12. Is it below or above Lisburn along the creek?

A. Below Lisburn.

Q. 13. When did George Sipe quit coaling for you?

[*Witness refers to memorandum-book.*]

A. August 5, 1873.

Q. 14. What is that book to which you now refer?

A. I call it a time-book.

Q. 15. Where was it kept? I mean where were the entries made?

A. It was kept in my office at the forge.

Q. 16. I observe that the book, at the place where you have opened it, and to which you have referred, purports to keep the time of a number of persons, among whom is George Sipe, for the month of August, 1873. When were the entries made?

[*Objected to, no sufficient foundation having been laid for the question.*]

A. On the day the man worked I gave him credit for his time.

Q. 17. Who kept the book, and who made the entries?

A. I kept the book; it is all in my handwriting. For that month I know it is, and I do not see any other person's handwriting in the book until 1877.

Q. 18. Did George Sipe ever work for you after August 5, 1873?

A. I think not one single day.

Q. 19. Do you know for what purpose he quit working for you?

A. Yes, sir.

Q. 20. Please state what it was.

A. He quit working for me to attend to a watermelon patch belonging to himself and John F. Wires.

Q. 21. Where was it located?

A. Along the Yellowbreeches creek. It was south of the road that leads from Lisburn to Lewisbury. We know the patch by the common name of Kunkel's Island. It lies between the stream and the mill race. The stream makes a large bend, and the mill race of Jacob S. Kunkel's mill crosses the neck of land formed by the bend.

Q. 22. Do you know of anything that happened to that watermelon patch?

A. Yes, sir; I know that the water of the Yellowbreeches creek got high and floated a great many of their watermelons away.

Q. 23. Will you give us some idea of the height to which the water rose along the creek at that time?

A. I know that it stopped operations at the forge; it was out on its banks at the forge so that we could boat around in a flat.

Q. 24. How high was the floor of the forge above the ordinary level of the water in the creek?

A. Near about three feet.

Q. 25. How high did the water, at that time, rise above the floor of the forge?

A. From three to four feet.

Q. 26. Where did you live at that time?

A. In the dwelling-house nearest the forge. There were a half dozen of them there, but this was the nearest one to the forge.

Q. 27. Was it situated higher than the forge?

A. Yes, sir.

Q. 28. It stood across the road from the forge, I believe, and was farther away from the creek; is not that correct?

A. Yes, sir.

Q. 29. Can you give us any idea of the extent of the water around the forge, and between the house and the creek?

A. The water was out on its bank, and so high that the water ran in front of my house in the public road.

Q. 30. How did you get about?

A. We could get around the forge on the bank in a boat, and could get around our coal-house and garden in a boat.

Q. 31. From the time that you and your brother-in-law took charge of the forge, in 1872, to the present time, have you ever been absent from Lisburn for any considerable length of time; and if so, when?

A. I have; from April, 1877, to February, 1878, and have been absent at no other time.

Q. 32. Where were you then?

A. At Decatur, Illinois.

Q. 33. How is Lisburn situated with respect to the Yellowbreeches creek?

A. The principal part of the town is considerably above the stream —on higher ground.

Q. 34. The stream flows near it and around it, does it not?

A. The stream forms a sort of peninsula; and Lisburn is situated on that peninsula.

Q. 35. There have been other floods, I suppose, along the Yellowbreeches whilst you have resided at Lisburn from August, 1872, to the present time; have there not?

A. No, sir; not to my knowledge; we have had high water, but not what I would call a flood, unless it be the high water of 1877, when I was absent.

Q. 36. How does the high water, concerning which you have been testifying, which flooded your forge and carried away the watermelons

of Sipe and Wire, compare with other high waters which you have witnessed along the Yellowbreeches since you took charge of the forge in 1872, up to the present time?

A. That was a flood in 1873, and very much higher than any water since that time; that is, to my knowledge.

Q. 37. When was the flood, concerning which you have been testifying? If you have any diary or memorandum by which you can fix the date, please refer to it in giving your answer.

A. George Sipe quit working for me in the coaling on August 5, 1873, and on August 18, 1873, an entry in my diary shows that I started the forge on that date—August 18—and likewise mention of "wet weather," "both teams in stable," cause me to fix the time between August, 5 and August 18.

Q. 38. Will you produce your diary, and point out to the examiner that he may enter them upon the record, the entries in it which induced you to believe that the flood took place at the time you have stated?

A. Yes, sir; the first is on Friday, August 8, 1873, "raining in the morning," "Thursday, August 14," "John in stable"—meaning the six-mule team was in the stable, "John" being John Vanalsdal, the teamster. In a number of places, the team is credited for only one trip, viz: August 14, one team, one trip, the other team being, as I said before, in the stable; I had two six-mule teams at the time, "August 15, one team, one trip; August 18, both teams at home, raining." That is about all. On the 18th, the day I started the forge, I have the entry "run-out started."

Q. 39. What does the entry "run-out started" mean?

A. We melt the pig-iron in a fire commonly called the run-out, after which we take it to the forge and convert it into wrought-iron.

Q. 40. Did the flood interfere with your melting pig-iron in the run-out?

A. Yes, sir; there were from four to five feet of water in the fire.

Q. 41. Can you tell how long the flood had abated before you started the run-out on the 18th of August?

A. Not definitely, I cannot; we were on considerable expense, and the impression on me is that we started as soon as possible after the water went down, giving us a day or two to clean out the mud.

Q. 42. Did John Frantz work for you in August, 1873?

A. Yes, sir; in the coaling.

Q. 43. Referring to your time-book, will you state when he worked for you during that month?

A. The 1st, 11th and 12th, 18th, and the remainder of the month.

Q. 44. Can you tell why he was not at work after the first and prior to the eleventh?

A. He had sickness in his family, as he reported to me; his wife was being confined.

Q. 45. How did he come to return on the 11th and work that day and the 12th, and then quit?

A. I urged him to go to work, and his wife hadn't been confined yet. I presume she was afterwards, because he was again called away on th e evening of the 12th.

[*By consent, the following copy of the entries in the time-book of witness for month of August*, 1873, *relating to John Frantz and George Sipe, is put in evidence, the original to be produced when called for:*]

"Time Book Month August '73 for one month.

	1 F	2 S	3 S	4 M	5 T	6 W	7 T	8 F	9 S	10 S	11 M	12 T	13 W	14 T	15 F	16 S	17 S	18 M	19 T	20 W	21 T	22 F	23 S	24 S	25 M	26 T	27 W	28 T	29 F	30 S	31 S
Jno. Frantz,	1										1	1						1	1	1	1	1	1		1	1	1	1	1	1	
Geo. Sipe,	1	1		1	1																										

Cross-examined, de bene esse, by Mr. Howson:

Cross-Q. 46. I understand that the entries in your diary indicate that between the 5th of August and the 18th there was a great deal of rain, and pretty continuous. Is that the case?

A. Yes, sir; a number of days I notice in my diary marked "wet" and "teams in stable," etc.

Cross-Q. 47. So much rain, in fact, as to interfere considerably with different parts of your business, irrespective of the matter of the flood?

A. Yes, sir.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 7th day of November, 1883.

FRED. M. OTT,
Examiner.

CHARLES I. BOYER.

Recess until 2 *P. M.*

Examination resumed at 2 P. M.

CHARLES I. BOYER, *being recalled, saith:*

Examined by Mr. Jacobs:

Q. Q. 48. After you had signed your deposition this morning and after

complainants' counsel had left, you made a statement in this room in the presence of the examiner with regard to the name by which the flood of 1873, concerning which you testified in your deposition, was commonly known about Lisburn. Will you please repeat that statement now?

A. That flood was commonly known as or called the "watermelon flood."

Q. Q. 49. Was there, to your knowledge, any other flood along that creek known as or called the "watermelon flood?"

A. No, sir.

Q. Q. 50. Do you know why it was called by that name?

A. On account of taking away the watermelons of Sipe and Wire.

Q. Q. 51. Did you or not see watermelons floating down the stream at that time?

A. Yes, sir; and caught them, or caught some of them—not all, of course.

Q. Q. 52. Were others engaged in catching them?

A. Not that I saw, but I heard them tell about their catching them.

Q. Q. 53. Do you know whether many or few of Sipe's and Wire's watermelons were washed away by that flood?

A. I do not; that is, of their whole number I don't know just what proportion. There were a great many watermelons, of course, went down the creek.

Subscribed to before me this 7th day of November, 1883.

FRED. M. OTT,
Examiner.

CHAS. I. BOYER.

JOHN F. LEE, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

My age is sixty; residence, New Cumberland, Cumberland county, Pa.; occupation, railroad agent and justice of the peace.

Q. 1. Please look at the paper which I now show you purporting to be an affidavit of Jacob M. Sadler, affirmed and subscribed before John F. Lee, justice of the peace, on the 30th day of June, A. D. 1880, and state in whose handwriting the jurat and the signature thereto are.

A. The jurat is in the handwriting of Mr. Jacobs, I think; the signature is my own.

Q. 2. In whose handwriting is the signature to the affidavit?

A. That is the handwriting of Jacob M. Sadler.

Q. 3. State whether or not you personally knew Mr. Jacob M. Sadler and whether you saw him subscribe to that affidavit.

A. I was personally acquainted with Jacob M. Sadler and I saw him write his name to that affidavit.

Q. 4. I recognize the body of the affidavit as in Mr. M. W. Jacobs' handwriting. Will you tell us whether or not Mr. Jacobs wrote it down from statements made by Mr. Sadler in your presence, and whether or not, after it was written down, it was read over by Mr. Sadler, or to Mr. Sadler, before he signed and affirmed to it?

A. I can't say that it was written down from statements made to Mr. Jacobs in my presence; I can say positively that the affidavit was read to Mr. Sadler in my presence, and he was asked if it was correct, and if that was what he wished to be qualified to.

Q. 5. Did you have one or two interviews with Mr. Jacob M. Sadler with reference to Mr. Drawbaugh's talking-machine invention?

[*Objected to as incompetent.*]

A. I had no interview with relation to the matter at all; it was Mr. Jacobs who was talking to him about it, but I was present. I was present twice; once previous to the time at which the affidavit was made —the 30th day of June.

Q. 6. Referring to the first interview between Mr. Jacobs and Mr. Sadler at which you were present, tell us, as far as your memory serves you, how long that was prior to the date of the affidavit.

A. That I am unable to say.

Q. 7. Why didn't Mr. Jacobs take his affidavit at the first interview at which you were present?

A. My recollection is that there was some trouble about Sadler's recollection of the dates, and they agreed to let the matter rest until he had time to hunt it up. Mr. Sadler boarded at New Cumberland, but his home was at his father's, about three miles from New Cumberland, and there is where he had all his papers.

[*Affidavit offered in evidence, to be marked "Exhibit Jacob M. Sadler's Affidavit." It is the same affidavit which was marked for identification on the 6th day of January, 1883, by the examiner, in connection with the deposition of William Sadler on behalf of complainant, as referred to near the bottom of page* 1051, *complainants' printed rebutting record, and printed in full on the preceding page,* 1050.

Deposition objected to as incompetent, and complainants' counsel further object to the paper writing offered in evidence by defendants as "Exhibit Sadler Affidavit," for the reason that said paper cannot be deemed for the purposes of this case, nor in any legal sense, an affidavit; does not stand any higher than a solicited declaration; does not identify nor describe any instrument, and is too vague, indefinite, and uncertain to be evidence—and further object that it is new matter, not rebuttal.]

Cross-examination, de bene esse, by Mr. Storrow:

Cross-Q. 8. Was Mr. Daniel Drawbaugh at New Cumberland with Mr. Jacobs during both of these interviews?

A. He was there during both interviews.

Cross-Q. 9. The jurat to this affidavit is dated June 30, 1880, which was more than three months before the commencement of this suit. Did Mr. Jacobs or Mr. Drawbaugh tell you why they wanted the affidavit?

[*Objected to as incompetent.*]

A. I don't know that they told me specially with regard to this affidavit; they gave me to understand, in a general way, that they were taking testimony in a telephone case for Mr. Drawbaugh, or a company that had been formed in his behalf.

Cross-Q. 10. Did they tell you that there was a suit?

[*Same objection.*]

A. No, sir.

Cross-Q. 11. Did they tell you they expected to have one?

[*Same objection.*]

A. I can't say that they did; the truth is that they told me very little about it, and, as it was none of my business, I didn't ask them about it.

Cross-Q. 12. I suppose that all you troubled yourself about was to see the man sign the affidavit, and swear to it, and sign the jurat?

A. That was all—in other words, to do my duty as a magistrate.

Cross-Q. 13. You took a number of other affidavits for Mr. Jacobs and Mr. Drawbaugh in the same way during the same year, did you not?

A. Yes, sir; I took several.

Cross-Q. 14. You are the same John F. Lee who testified in this case about some lumber sold to George Drawbaugh, and whose deposition appears on page 632 of defendant's printed record, are you not?

A. Yes, sir.

Cross-Q. 15. What partners have you had in the lumber business at New Cumberland since 1868?

[*Objected to as new matter not referred to in the examination-in-chief.*]

A. Christian Eberly and Henry Baylor.

Cross-Q. 16. A witness by the name of Henry Baylor was called by the defendants, and testified, on page 157 of their printed record, that he was sixty-two years old; resided in York, and was engaged in the lumber business in New Cumberland with another party from the spring of 1873 to 1876, or 1877; was he your partner, and what was the name of the firm?

[*Same objection, and respondents' counsel calls the attention of the court to this persistent violation of the rules of evidence.*]

A. He was; the name of the firm was Lee & Baylor.

Cross-Q. 17. Did he have any other partner in the lumber business, at New Cumberland, during those years except you?

[*Same objection.*]

A. None that I know of.

Cross-Q. 18. In his 18th ans., on pages 159–160, he stated that in 1873 he was almost induced to advance some money to Mr. Drawbaugh; and he then stated the reason which he said led him not to do it; and the reason he gave was as follows:

"I would have done so had my business progressed more satisfactorily; owing to my partner, unknown to me at the time of accepting him, being considerable of a drinking man, which I knew nothing of at the time of accepting him as a partner, greatly worried me."

Did Mr. Baylor tell the truth when he said you were so much of a drinking man as to greatly worry him?

[*Same objection; the complainants not having undertaken to contradict or rebut Mr. Baylor during the time allowed to them for taking their rebutting testimony, it is too late for them now to enter upon that subject, and the question is therefore incompetent for that reason, besides being incompetent for the reason that this witness' copartnership or relations with Mr. Baylor, and the matters testified to by Mr. Baylor, were in no way referred to in the examination-in-chief.*

Complainant's counsel says that the defendants have now called Mr. Lee, and have examined him touching his recollection of what took place at two certain interviews, at the first of which Mr. Lee performed no official act. He finds that the defendants had previously defamed Mr. Lee's character, and

he now desires to ascertain whether those defamatory statements were true or not.

Respondents' counsel replies that it is not true that the respondents or their counsel have ever defamed Mr. Lee's character; they called Mr. Baylor as a witness to testify to certain facts, and Mr. Bayler is responsible for whatever he said. But, respondents' counsel fail to see anything defamatory in his statement, the efforts now making by complainants' counsel to force upon the record at this stage of the case matters which, if they intended to put in, they should have put in during their time for rebutting, is as transparent as it is illegal, and respondents' counsel protests against its further continuance.

Complainants' counsel inquires whether respondents' counsel takes the ground that the statements made by Mr. Baylor about Mr. Lee are true, or not true. If the latter, he will not push the inquiry any further.

Respondents' counsel replies that he takes no ground about it at all, one way or the other; and he denies the legal right of complainants' counsel to enter upon the subject at this time and in this irregular and unlawful manner.]

A. I wouldn't like to undertake to say what would worry Mr. Baylor, or what he would worry himself about.

Cross-Q. 19. Why not?

[*Same objection.*]

A. Because Mr. Baylor was a man who was very excitable, very easily worried, and very hard to get along with; I should dislike very much to be compelled to account for all his worriment.

Cross-Q. 20. Did you have habits of drinking at that time which ought to have worried any reasonable man?

[*Objected to as before, and also as leading and calling for a mere opinion.*]

A. My opinion is that I did not.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 8th day of November, 1883.

FRED. M. OTT,
Examiner.

JNO. F. LEE.

Recess until 3 P. M.

3, P. M., examination resumed.

JOHN FRANTZ, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

My age is about thirty-eight; residence, Lisburn, Cumberland county, Pa.; occupation, laborer.

Q. 1. Did you ever work at coaling?

A. Yes, sir.

Q. 2. When, and for whom?

A. In 1872 and 1873, and for Mr. Boyer and Mumma.

Q. 3. Tell us whether or not you ever worked at coaling at any other time, or for any other persons.

A. I did not.

Q. 4. Boyer and Mumma were the proprietors of the forge on the Yellowbreeches creek, were they not?

A. Yes, sir.

Q. 5. Where did you do the coaling?

A. At the Newbury coaling, on the mountain, in York county, about five or six miles from Lisburn.

Q. 6. How far is that coaling from Boyer & Mumma's forge?

A. I suppose it would be about nine miles.

Q. 7. You made charcoal there for the forge, I suppose, did you?

A. Yes, sir.

Q. 8. How was that charcoal gotten from the coaling to the forge?

A. It was hauled from the coaling to the forge with teams.

Q. 9. Do you remember whether there was, or was not, a great freshet in the streams in that part of the country during the time when you worked at coaling, as you have testified?

A. I do; there was; yes, sir.

Q. 10. Can you tell us in what month and year that great freshet occurred?

A. It occurred in the month of August, 1873.

Q. 11. If any particular thing happened in your family at that time that helps you to fix the date, will you please tell us what it was, and all about it?

A. Yes, sir; I left the coaling on the first of August in the evening, and stayed at home that week, and then Mr. Boyer needed me, and came after me and took me back again, and I worked two days; and then I was sent for. My wife was confined then; and I stayed at home the balance of that week, and in that week was the freshet.

Q. 12. What physician was first called to attend your wife in that confinement?

A. Dr. Eppley, of Lewisbury.

Q. 13. Where were you living?

A. I lived in Warrington township, York county.

Q. 14. Was he the only physician that was called on that occasion, or not?

A. No, sir.

Q. 15. What other physician did you call?

A. Dr. Lemer of Lisburn; I am not certain about the spelling of his name.

Q. 16. Who went for Dr. Lemer on that occasion?

A. I went myself.

Q. 17. What time of day did you go for him, and what time of day, did you return home?

A. I went for him in the after part of the right, some time, and got home towards morning.

Q. 18. How did you go?

A. I went on horseback.

Q. 19. What kind of weather was it that night?

A. It was raining.

Q. 20. What did you find to be the condition of the streams along the road as you went to Lisburn for the doctor that night and returned?

A. The streams were high.

Q. 21. When you got back home the next morning had your wife given birth to the child?

A. Yes, sir.

Q. 22. Did you go anywhere within the next few days? If so, where?

A. I went to visit my father close to Rosstown, York county.

Q. 23. Was that before you went back to work at the coaling?

A. Yes, sir.

Q. 24. What did you find to be the condition of the streams along the road when you went to visit your father at that time?

A. I don't recollect much about the streams when I went, but that day it rained very hard, and the streams got very high that day.

Q. 25. When you went back home from your father's, did you return by the same road that you took when you went to your father's, or not?

A. No, sir; I did not; I couldn't come by the road that I took; the streams were too high; there was a foot-log across Beaver creek, and I couldn't get on that to cross.

Q. 26. When you went back to work at the coaling did you hear the teamsters say anything about the freshet at the forge? If so, what did they say?

[*Objected to as hearsay.*]

A. Yes, sir; I heard them talking about the high waters—water running into the forge and stopping work, watermelons going off, and bridges going down, and so on.

Q. 27. By the time-book of Mr. Charles I. Boyer, a copy from which was put in evidence in his deposition immediately after question and answer 45, I see that you are indicated as being at work for Mr. Boyer's concern on Friday, the 1st day of August, 1873; then absent for the next nine days, including Sundays; then at work on Monday and Tuesday, the 11th and 12th days of August; then at work again on Monday, the 18th day of August, and on all the remaining week days of that month. You have testified that you left the coaling on the evening of the 1st day of August; that Mr. Boyer afterwards came and got you, and you worked two days, and then went home on account of your wife's confinement, and stayed at home the balance of the week, and that in that week the freshet occurred. By reference to Mr. Boyer's time-book, can you fix the day when you went home on account of your wife's confinement having come on?

A. Yes, sir; I came home on the evening of the 12th day of August.

Q. 28. That day appears to have been Tuesday, and the freshet occurred during that week and before you returned to work on August 18, if I understand you.

A. Yes, sir.

Cross-examination waived by Mr. Storrow.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 8th day of November, 1883.

FRED. M. OTT,
Examiner.

JOHN FRANTZ.

Adjourned until November 9, 1883, at 10 A. M.

NOVEMBER 9, 1883, 10 A. M.

Examination resumed pursuant to adjournment.

Present, same counsel.

DAVID A. UHRICH, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

My age is twenty-nine; residence, four miles south of Mechanicsburg, in Cumberland county, Penna.; occupation, farming.

Q. 1. Do you know Jacob Kimmel, of Mechanicsburg, a netmaker, and who, I believe, was formerly a carpenter, and who is about forty-three years of age?

A. Yes, sir.

Q. 2. When did you first become acquainted with him, and where?

A. At Mr. Daniel Drawbaugh's shop, at Eberly's Mills, about the year 1876, as near as I can remember.

Q. 3. How happened you to be at Mr. Daniel Drawbaugh's shop on that occasion?

A. I accompanied Mr. Samuel F. Hauck there.

Q. 4. Then, if I understand you correctly, Mr. Kimmel did not accompany you there?

A. No, sir; he was there when we came.

Q. 5. Who else was there in the shop that day, besides Mr. Daniel Drawbaugh, Mr. Samuel F. Hauck, Mr. Kimmel, and yourself, if anybody?

A. No one that I remember of.

Q. 6. Will you tell us whether or not Mr. David A. Hauck and Mr. David McIlhenny were there that day with you?

[*Objected to as leading.*]

A. David Hauck was not there; as far as Mr. McIlhenny is concerned, I cannot say; I have no recollection of seeing him there.

Q. 7. Tell us whether or not you were ever at Mr. Daniel Drawbaugh's shop before that time, or after that time.

A. I was not.

Q. 8. While you and Mr. Samuel F. Hauck and Mr. Jacob Kimmel were there in Mr. Daniel Drawbaugh's shop that day, do you remember whether or not Mr. Drawbaugh showed the party anything; and if so, what?

A. He showed us some of them—I don't know what he called them—speaking-machines.

Q. 9. Was Mr. Samuel F. Hauck present when Mr. Drawbaugh showed you the speaking-machines?

A. He was.

Q. 10. Did or did not Mr. Samuel F. Hauck talk to Mr. Drawbaugh about the speaking-machines at that time?

[*Objected to as leading.*]

A. He did.

Q. 11. Will you please look at the machines marked "A," "B," "D," "E," now shown you, and see if any of them look like the machines that Mr. Drawbaugh showed to you and Mr. Hauck and Mr. Kimmel that day; and if so, point out to the examiner which ones.

[*Objected to as a leading and improper mode of inquiry, no independent recollection on the part of the witness having been shown.*]

A. I saw a large one and a small one, something similar to two of these ("A" and "D").

Q. 12. Mr. Samuel F. Hauck testified at Philadelphia last winter for the Bell Telephone Company, (see pages 1160 to 1184, inclusive, complainants' printed record, and especially pages 1180 to 1184,) and was examined regarding the visit to Mr. Drawbaugh's shop when you and Mr. Kimmel and he (Mr. Samuel F. Hauck) were present, but he denied any recollection of it; did you or did you not, some time last winter, have a conversation with Mr. Samuel F. Hauck about that visit?

A. Yes, sir; I had.

Q. 13. Tell us how the conversation began, and what took place and what was said during it.

[*Objected to as immaterial and incompetent.*]

A. He told me he was subpœnaed in the telephone suit and we were speaking of it, and he thought I was not there when Mr. Kimmel was there. He said I never saw any of these instruments, and it must have been a clock that I saw when I was there—Mr. Hauck said that. We walked into the store, and Mr. Kimmel was there, and we asked him about it, and he said he saw the same things I saw; and Mr. Hauck said he must have been mistaken then; that he didn't remember.

Q. 13. When Mr. Hauck told you in that conversation that you never saw any of these instruments there and that it must have been a clock that you saw there; what did you reply to him?

[*Same objection as above.*]

A. I told him I had never been to Mr. Drawbaugh's shop but once, and the clock I had never seen.

Q. 14. Then you did not see Mr. Drawbaugh's clock at the time you went there?

A. I never seen it.

Cross-examined, de bene esse, by Mr. Howson:

Cross-Q. 15. How long were you at Drawbaugh's shop on the occasion you have testified to?

A. About one hour.

Cross-Q. 16. What part of the shop were you in?

A. All through, I suppose.

Cross-Q. 17. Tell us all you recollect about seeing or doing there at the time.

A. Mr. Drawbaugh showed us the instruments and we were walking about the shop when not engaged in talking.

Cross-Q. 18. I ask the examiner to repeat the question to you, and I ask you whether that is the best answer you can give to it?

[*Question repeated.*]

[*Objected to, as the answer has been already fully given.*]

A. I was walking about the shop while Mr. Hauck and Drawbaugh were engaged in talking, after he showed us the instruments.

Cross-Q. 19. What else were you doing that day?

A. I came from there to Harrisburg.

Cross-Q. 20. Where were you before you went there?

A. I just came from Mechanicsburg that morning—I don't recollect at what time.

Cross Q. 21. You didn't stop anywhere else, then, on the road over that morning?

A. On the road from Mechanicsburg to Drawbaugh's shop? Not that I remember.

Cross-Q. 22. When was it that you had the interview with Mr. Hauck—what time last winter?

A. When he was subpœnaed.

Cross-Q. 23. What day of the week was it?

A. I don't recollect.

Cross-Q. 24. Give us your recollection as to what part of the winter it was in—what month?

A. I have no idea.

Cross-Q. 25. What were you doing at or about the time of that interview?

A. I was not doing anything, that I can recollect.

Cross-Q. 26. Hadn't you been somewhere to spend a Sunday, a day or two, or a few days, before that?

A. Not that I remember.

Cross-Q. 27. Who else last winter talked to you about your visit to Drawbaugh's?

A. No one except Mr. Hauck and Kimmel, that I remember of.

Cross-Q. 28. Do you wish us to understand that you do not recollect being spoken to on the subject at any time last winter by anybody except Mr. Hauck and Mr. Kimmel?

A. If they did, I can't recall it.

Cross-Q. 29. Didn't you tell Mr. Samuel F. Hauck when you and he had a talk last winter, that your recollection was that on the day of the visit to Drawbaugh's shop you and he (Hauck) drove in a buggy and went to Hertzler's?

A. After we left Mr. Drawbaugh's we went to Hertzler's; we drove down to Mechanicsburg in a buggy.

Cross-Q. 30. Now, isn't it a fact that you gave it to Mr. Hauck as your recollection last winter that you and he went to Hertzler's first and from Hertzler's to Drawbaugh's shop?

A. No, sir.

Cross-Q. 31. Had you more than one interview last winter on the subject with Messrs. Hauck & Kimmel?

A. Mr. Hauck and I spoke about it several times. I suppose Mr. Kimmel was in the store a good deal; he was in in the evenings. He may have been there or he may not have been present when we spoke of it—after our first conversation with regard to our visit—with regard to what we saw there.

Cross-Q. 32. Didn't Mr. Hauck tell you at your first talk last winter that he had been to Philadelphia to testify?

A. I can't remember it.

Cross-Q. 33. What season of the year was it when you and he visited Mr. Drawbaugh's shop?

A. In the spring of the year.

Cross-Q. 34. Didn't Mr. Hauck tell you at your first talk with him last winter, that he had been asked the question whether he was not with you at Drawbaugh's shop?

A. I don't remember.

Cross-Q. 35. You have stated that you do not recollect having talked about the matter last winter with anybody but Messrs. Hauck and Kimmel. Have you any recollection of talking with anybody about the matter at any time before last winter, within the last two or three years?

A. Yes, sir.

Cross Q. 36. With whom?

A. Mr. Drawbaugh and several gentlemen called around.

Cross-Q. 37. Give us the names of the several gentlemen or of those of them whom you remember.

A. I can't remember the names at present.

Cross-Q. 38. Do you know Mr. Edgar W. Chellis of Harrisburg, one of the defendants in this case?

A. Yes, sir; I think that was the name of one of the gentlemen who was around with Mr. Drawbaugh.

Cross-Q. 39. When and where was this interview between yourself and Messrs. Drawbaugh, Chellis, and others?

A. At my house; the time I couldn't state.

Cross-Q. 40. Was it a long time or a short time before your first talk with Mr. Hauck?

A. I don't remember.

Cross-Q. 41. Do you mean to say that your memory is altogether blank as to whether it was a long time or a short time before?

A. I can't form any idea.

Cross-Q. 42. If I understand your testimony, these gentlemen—Mr. Drawbaugh and others—came to your house for the purpose of seeing and talking with you; is that correct?

A. Yes, sir.

Cross-Q. 43. Do you recollect whether they showed you anything?

A. They did.

Cross-Q. 44. What did they show you?

A. Instruments. [Motioning towards the exhibits "A," "B," "D," and "E," which were lying on the table before him.]

Cross-Q. 45. Did they ask you to make any affidavits or sign any written statements?

A. I don't remember.

Re-direct by Mr. Hill:

Q. Q. 46. When you and Mr. Samuel F. Hauck went down to Mr.

Drawbaugh's shop together in a buggy, as you have testified, did you understand from Mr. Hauck that he wanted to see Mr. Drawbaugh on any matter of business? If so, what?

[*Objected to as leading, incompetent, and not re-examination.*]

A. He told me he had business with Mr. Drawbaugh to engage him to come to Mechanicsburg.

Q. Q. 47. For what purpose?

[*Same objection.*]

A. To make faucets.

[*The whole deposition objected to as concerning immaterial facts, and as not in rebuttal.*]

[*Mr. Howson requests the examiner to certify that the instruments have not been taken by him to Mechanicsburg, and shown to Mr. Uhrich.*

Mr. Hill denies the right of complainant's counsel to have any such certificate made, and denies the right of the examiner to certify to any such matter; but admits for the purposes of this case, that if the instruments were shown to the witness by Mr. Drawbaugh and others, as stated in cross-answers 35 to 44 inclusive, then the time when such visit and exhibition were made was prior to the time when the instruments referred to were formally offered in evidence in this case.

The examiner certifies that respondents have never had the custody of the instruments since they were offered in evidence, and that the only time they have been out of his custody since that time, was during last winter, at Philadelphia, where they were left with complainant's counsel for a few days by consent of respondent's counsel.]

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 9th day of November, 1883.

FRED. M. OTT,
Examiner.

D. A. UHRICH.

Recess until 2 P. M.

ORLANDO KAHNEY, *being produced, affirmed, and examined, saith:*

Examined by Mr. Hill:

Q. 1. Are you the same Orlando Kahney who was examined at Philadelphia in January, 1883, in this suit, as a witness on behalf of

the Bell Telephone Company, and whose deposition is printed in the complainants' rebutting record, pages 990 to 1020 inclusive?

A. Yes, sir.

Q. 2. After you finished your said deposition at Philadelphia last winter, did you return to Illinois? If so, when?

A. Yes, sir; I did, but I don't remember what time I left here to go there.

Q. 3. You finished your deposition on the 4th day of January, 1883. Give us your best recollection as to about how long after that day you returned to Illinois.

A. I think it was about two weeks—I am not positive—the time I started.

Q. 4. Please look at the letter and envelope which I now hand you, and state who wrote that letter.

A. I wrote that letter.

Q. 5. The envelope is addressed to "Mr. Daniel Drawbaugh, Eberly's Mills, Milltown, Cumberland County, Penna.," and is postmarked "Feb. 3, 1883, Mendota, Ill." The letter appears to be dated at "Triumph, Jan. the 1, 1883." On what day was that letter written?

A. The letter must have been written on the 1st of February. There is a mistake in the date of the month, as I wasn't there in Illinois on the 1st of January.

Q. 6. Do you remember how long after you wrote it you mailed it to Mr. Drawbaugh, or about how long?

A. I mailed it within a day or two, or maybe the same day; but I don't think I did mail it the same day. It wasn't more than a day or two, though, until I mailed it.

Q. 7. How far is Triumph, Ill., from Mendota, Ill.?

A. About seven or eight miles.

Mr. Hill requests the examiner to copy the letter upon the record at this point. It is as follows:

"TRIUMPH, *Jan. the* 1, 1883.

FRIEND DANIEL,

I thought I would right you A few lines to let you know that I got back all right again and to let you know that last night there was some things came to my mind the first that I ever heard of A talking Meshien it was in seventy five and know exactly when it was or can find out with very litle troubel and thare was A man told me in mendota today and he said that he knew of you talking of having being working at the talking maschien in the year of seventy and let me know whether I shall see smith or not right soon for I may leave

here soon with this I Close my Respects to all address Mendota Lasalle County Ill."

Mr. Hill offers said letter in evidence as "Exhibit Kahney Letter," and its envelope as "Exhibit Kahney Letter Envelope."

Q. 8. In this letter you state to Mr. Drawbaugh that the night before you wrote the letter there were some things came to your mind the first that you ever heard of a talking-machine, it was in 1875, and you know exactly when it was, or can find out with very little trouble: will you tell us now what particular fact or event you referred to in that letter as being the occasion when you first knew of the talking-machine?

A. I was working for Wils. Walters and went to the shop to grind scythes—cradle scythes—and ground the scythes; and after being through Dan took me in one corner of the shop and he picked up an instrument there with wires attached to it—at least I thought they was wires. He told me to place it to my ear, and I done so, and he went out of the shop; I don't know whether he went out of the shop or not—yes, he did. He went out of the shop by the lower door; and I heard his voice by or through that instrument.

Q. 9. What was his voice doing through that instrument—talking, singing, whistling, or what?

[*Objected to as leading.*]

A. He was talking.

Q. 10. Did you or did you not hear and understand through the instrument what he said?

A. Yes, sir; I did.

Q. 11. Did anybody go with you to Mr. Drawbaugh's shop to grind those scythes or not?

A. Yes, sir.

Q. 12. Who?

A. Milton Basehore.

Q. 13. What were those scythes to be used for when ground?

A. To cradle oats.

Q. 14. Whose oats?

A. Wilson P. Walters'.

Q. 15. About what time of year was it that you and Milton Basehore went down to Mr. Drawbaugh's shop to grind those scythes?

A. I would say it was in July.

Q. 16. Before, or during, or after the oat harvest that year?

A. Before the oat harvest

Q. 17. Tell us whether you ever did or did not go to Mr. Drawbaugh's shop with Milton Basehore at any other time than that.

A. I don't remember of any other time, but think that was the only time that him and I was ever there together.

Q. 18. In what part of the shop did you grind the scythes that day?

A. On the first floor above the basement.

Q. 19. On what floor were you when you listened at the talking-machine?

A. On the same floor.

Q. 20. Was that floor all in one room, or divided into different rooms, so far as you remember?

A. It was all in one room, if I am not mistaken.

Q. 21. What corner of the shop did Mr. Drawbaugh take you into to listen at the instruments?

A. The south-east corner.

Q. 22. What position did you stand or sit in while holding the instrument to your ear?

A. I stood a kind of in a stooped or rest position, with my elbow resting on something.

Q. 23. How large was the instrument which you held to your ear?

A. It wasn't very large—likely two inches across, or two and a half, or may be a little more.

Q. 24. Did you take it in your hand and hold it in your hand while putting it to your ear or not?

A. Yes, sir.

Q. 25. What was it's shape, so far as you remember?

[*Objected to as calling for the witness' conjecture and not his memory.*]

A. It was round, flat on two sides, and had a hole on one side as a mouth-piece.

Q. 26. Do you remember of what door you entered on that floor of the shop at that time?

A. The door at the south-west corner of the shop.

Q. 27. When you and Mr. Basehore first went down to the shop that day, to what door did you go—what was said and done?

A. I went to the second-story door from the basement, and rapped for Mr. Drawbaugh. He had the door locked, and the key was sticking in the hole on the inside. I continued rapping and he opened the door. I asked him if I could grind the cradle-scythes on his grindstone. He said

I could grind them on the first floor, above the basement. He said he would go down through and open the door for us; we went and got the scythes, and after he opened the door we went in and ground the cradle-scythes.

Q. 28. How did you get up to the door on the second story above the basement—did you go up by outside or inside stairs?

A. We went up by outside stairs.

Q. 29. That event, if I understand you, took place while you worked for Mr. Wilson Walters; do I understand you correctly?

[*Objected to as leading.*]

A. Yes, sir.

Q. 30. When did you last work for Mr. Wilson Walters?

A. In the year 1875.

Q. 31. When you were on the witness-stand before, you testified that you quit working for him about July or August, 1875; can you fix the time any more closely now as to when you quit working for him?

A. About the last of September or first of October, or somewhere close along there.

Q. 32. Mr. Wilson Walters testified here the other day, and produced his books, which showed that you quit about the 11th of September, 1875, if I recollect the day aright; what would you say about that being the date when you quit?

A. If his books show it that way I suppose it must be so; he always kept the book; I never kept no book.

Q. 33. After you quit working for Mr. Wilson Walters that fall, what work, if any, and for whom, did you do, that same fall?

A. I cut off corn and husked corn for different men around there. I cut off corn for Joseph Best, and for Samuel Hertzler, and for Harry Neidig, and for John Eichelberger. I husked corn for different farmers around there.

Q. 34. Did you see Mr. Daniel Drawbaugh again that fall, or not?

A. Yes, sir.

Q. 35. For whom were you working when you again saw Mr. Daniel Drawbaugh that fall, after you left Wilson Walters?

A. I was working for Joseph Best.

Q. 36. How long, and in what months that fall, did you work for Joseph Best?

A. I worked for him, after I quit working for Wils. Walters, whenever he had work. Whenever I would not be working for anybody

else I would work for him. I worked for him in September and October, and on up to the time when I went to Sadler's in 1876, by the day and by the job.

Q. 37. When you cut the corn that fall for Mr. Joseph Best, did you do it by the day or by the job?

A. By the day and by the job. I cut six acres and a half of corn for him by the job.

Q. 38. In what month did you cut corn for Mr. Best that fall?

A. October.

Q. 39. Tell us how you happened to see Mr. Daniel Drawbaugh that fall while you were at work for Mr. Best.

A. I was down to his shop one day in the morning and seen him.

Q. 40. Do you remember why you left your work that morning and went down to Mr. Drawbaugh's shop?

A. The corn was wet, and I didn't want to cut corn while it was wet.

Q. 41. When you got down to Mr. Drawbaugh's shop that day, where did you find Mr. Daniel Drawbaugh?

A. In his blacksmith shop—I suppose that is what he called it—a shed with his anvil and fire there.

Q. 42. What was Mr. Drawbaugh doing, then, when you found him there?

A. He was forging a piece of iron.

Q. 43. Did you have any conversation there with him that day in the blacksmith shop or not?

A. Yes, sir; I did.

Q. 44. Tell us what passed between you and him that day in the blacksmith shop.

A. I don't remember all that did pass between he and I that day; I remember some parts that he spoke of—different things. I remember he asked me if I could loan him seventy-five or one hundred dollars, and I told him I couldn't and asked him what he wanted with the money. He told me he wanted to get a patent. I asked him what he wanted to get patented, and he said the talking-machine.

Q. 45. When you testified for the Bell Telephone Company at Philadelphia last winter, did you, or did you not then remember these things that you have mentioned to-day, about seeing and listening at Mr. Drawbaugh's talking-machine in the summer of 1875 and about his wanting to borrow money from you to get it patented in October, 1875?

A. No, sir; I didn't remember anything of it at all.

Q. 46. When did the memory of these things come back to you and where?

A. After I went to the West.

Q. 47. What caused them to come back to your memory?

A. I was studying over being in Philadelphia and everything and it come to my recollection that I had seen and talked with Mr. Drawbaugh on the talking-machine.

Q. 48. Do you mean, talked with him *by* the machine, or talked with him *about* the machine?

A. Talked with him *by* the machine, or that he rather talked to me by the machine.

Q. 49. And you wrote to Mr. Drawbaugh informing him of it in order that no injustice might be done by the mistake which you saw that you had made at Philadelphia; is that the way of it?

A. Yes, sir.

Q. 50. In your letter which I have put in evidence as "Exhibit Kahney Letter," you say in substance that the night before the letter was written, it came back to your mind that you had heard of the talking-machine in 1875; and then you make this statement in substance: that a man in Mendota told you on the same day on which the letter was written, and he said that he knew of Mr. Drawbaugh's working on the talking-machine in the year of 1870; what did you mean that the man told you?

[*Objected to as calling for hearsay.*]

A. He told me that he knew or heard talk that Dan. Drawbaugh was working on the talking-machines in 1869 or 1870—1869 or 1870 is what he said; but I put it 1870 in the letter.

[*Answer objected to by Mr. Storrow as hearsay.*]

Q. 51. Then, if I understand you, he did not tell you that you had seen or heard of the talking-machine in 1875, and the letter does not mean that he told you so; is that the fact?

[*Objected to as leading and improper.*]

A. No, sir; it does not.

Cross-examined by Mr. Storrow:

Cross-Q. 52. Did you come on from the West for the purpose of giving this deposition?

A. Yes, sir.

Cross-Q. 53. How long ago?

A. Over a month ago, or something like that.

Cross-Q. 54. Did you come on alone?

A. Yes, sir.

Cross-Q. 55. Was there anybody on the train that you were acquainted with?

A. No, sir; I didn't see any one on the train that I was acquainted with.

Cross-Q. 56. Will you tell me, as near as you can, on what day you left home, and on what day you got here?

A. [Witness refers to small book.] I left there—I think it was on the fifth of October—and got here the following Sunday night at eleven o'clock; I left Freeport on Friday, which was the fifth of October, I think; I arrived here on the midnight train on Sunday night; I don't know the exact time it arrives.

Cross-Q. 57. I will read you your 48th answer [reads it.] I infer from that that you mean us to understand that he talked to you, but that you did not talk to him by the machine; is that what you mean us to understand?

A. What I meant was, that he talked to me but I did not talk to him.

Cross-Q. 58. How long had you been back in the West before you wrote this letter of February 1st, 1883?

A. I don't remember just how long I was there—may be four or five days, and may be a week. These things just came to my remembrance, and I just sat down and wrote Mr. Drawbaugh a letter.

Cross-Q. 59. Why didn't you sign that letter?

A. I forgot it, I suppose.

Cross-Q. 60. Who was the man in Mendota mentioned in the letter?

A. My brother, Alfred Kahney.

Cross-Q. 61. Who was the person referred to as Smith in the letter?

A. David Smith.

Cross-Q. 62. Where does Mr. David Smith live?

A. He lives in Chicago.

Cross-Q. 63. What is his business?

A. He is a dentist.

Cross-Q. 64. Had Mr. Drawbaugh asked you to see Smith?

A. No, sir; I told Mr. Drawbaugh I would go and see Smith.

Cross-Q. 65. What were you to see Smith about?

A. To see if he remembered of the time that I spoke to him about the telephone.

Cross-Q. 66. How came you to offer to go to see Smith about the telephone?

A. To see if he remembered if I had made any dates on the day that we spoke of it.

Cross-Q. 67. Did you tell Mr. Drawbaugh that you thought you had spoken of it to Smith?

A. Yes, sir.

Cross-Q. 68. How long have you known Smith, and where did you first know him?

A. I have known Smith, I think, since 1880; I ain't just positive; I got acquainted with him at Triumph, Ills.

Cross-Q. 69. When did you talk with him about the telephone?

A. The fall of the same year that I first met him. It was while husking corn for B. J. Hall, at Triumph.

Cross-Q. 70. Where was it that you made this offer to Mr. Drawbaugh, that you would go and see Smith?

A. I don't remember where it was.

Cross-Q. 71. Did you talk of it more than once to Mr. Drawbaugh?

A. I don't remember if I did.

Cross-Q. 72. When was it that you told Drawbaugh that you would go and see Smith?

A. It was before I went out to Illinois.

Cross-Q. 73. Do you mean after you testified?

A. Yes, sir.

Cross-Q. 74. Who else was present?

A. I don't think there was any one present.

Cross-Q. 75. Where was it that you told Drawbaugh that you would go and see Smith?

[*Objected to as already answered.*]

A. I don't remember where it was; I had several conversations with Mr. Drawbaugh, and I don't remember where it was that I told him.

Cross-Q. 76. Did you have several conversations with Drawbaugh last January about Smith?

A. No, sir; I don't think I had.

Cross-Q. 77. Did you receive any answer to this letter, either oral or written?

A. I got an answer by letter.

Cross-Q. 78. When was that?

A. It wasn't for a long time afterwards.

Cross-Q. 79. How long a time? Give me the date as near as you can.

A. I can't form any idea how long it was afterwards.

Cross-Q. 80. You have already said that it wasn't for a good while. That is a fact, I suppose?

A. I think it wasn't for some time that I received the answer.

Cross-Q. 81. So long that you began to think that no answer was coming, wasn't it?

[*Objected to as immaterial and irrelevant, and the whole matter of the answer objected to as new matter not referred to in the examination-in-chief.*]

A. I expected an answer, of course.

Cross-Q. 82. But you were surprised at the delay, were you not?

[*Same objection.*]

A. It didn't surprise me very much.

Cross-Q. 83. Have you got that answer?

[*Same objection.*]

A. I don't know if I have got it any more; I think, though, that I have.

Cross-Q. 84. Where is it?

[*Same objection.*]

A. I don't know if I've got it, or not.

Cross-Q. 86. When did you last see it?

[*Same objection.*]

A. I don't remember.

Cross-Q. 86. Where did you last see it?

[*Same objection.*]

A. When I carried them in a book in my pocket.

Cross-Q. 87. Where was that?

[*Same objection.*]

A. That was wherever I went, so long as I carried the book.

Cross-Q. 88. Where is the book?

[*Same objection.*]

A. I think the book is over to home—White Hill.

Cross-Q. 89. Have you ever shown that answer to anybody?

[*Same objection.*]

A. Not that I remember of.

Cross-Q. 90. Will you search for it to-night and bring it here in the morning?

[*Same objection.*]

A. Yes, sir.

Adjourned until November 10, 1883, at 10 A. M.

November 10, 1883, 10 *A. M.*

Examination resumed pursuant to adjournment.

Present, same counsel.

Cross-examination of Orlando Kahney by Mr. Storrow continued:

Cross-Q. 91. If you have found the letter which Mr. Drawbaugh sent you in answer to your letter of February 1, 1883, referred to yesterday, will you tell me when it was that you received it?

[*Same objection.*]

A. I don't remember when I did receive the letter—when I took it out of the post-office.

Cross-Q. 92. Have you the envelope it came in?

[*Same objection.*]

A. No, sir.

Cross-Q. 93. You may look at the date of the letter to refresh your recollection, and then tell me, as nearly as you can, when you received it.

[*Same objection.*]

A. I don't remember when I did receive the letter, but I don't suppose it lay in the office over five or six days at any rate.

Cross-Q. 94. When would that make it that you received it?

[*Same objection.*]

A. I can't tell that; Mr. Drawbaugh may have written that letter and carried it in his pocket for a few days or so before he sent it away. I can't place any date on which I did receive it; I have nothing to go by, only the date of the letter.

Cross-Q. 95. Did you write to Mr. Drawbaugh after receiving that letter?

[*All testimony relative to witness's writing to Mr. Drawbaugh again afterwards, objected to as new matter not referred to in the examination-in-chief, and as incompetent.*]

A. Yes, sir.

Cross-Q. 96. How soon after?

[*Same objection.*]

A. I don't remember how long it was after.

Cross-Q. 97. Why didn't you write him immediately after?

[*Same objection, and further objected to as assuming what is not proved.*]

A. I don't know why I didn't.

Cross-Q. 98. Did you receive a reply to your second letter?

[*Objected to as new matter not referred to in the examination-in-chief, and as incompetent.*]

A. I think I did.

Cross-Q. 99. When did you write your second letter?

[*Same objection.*]

A. I don't remember when it was I wrote it.

Cross-Q. 100. In what month?

[*Same objection.*]

A. I don't remember what month it was.

Cross-Q. 101. In what month did you receive the first letter from Mr. Drawbaugh?

[*Same objection.*]

A. I think it was in February.

Cross-Q. 102. Do you feel sure about that?

[*Same objection.*]

A. No, sir; I am not sure about it, but I think it was in February.

Cross-Q. 103. Did you receive a reply to the second letter you wrote to Mr. Drawbaugh?

[*Same objection.*]

A. I don't remember if I did.

Cross-Q. 104. Have you seen the dentist Smith since you first wrote to Mr. Drawbaugh?

A. Yes, sir.

Cross-Q. 105. When did you see him?

A. I think it was in February that I saw him.

Cross-Q. 106. Where?

A. In Chicago.

Cross-Q. 107. Whereabouts in Chicago?

A. At the dentist's office.

Cross-Q. 131. Do you remember the name or number of the cross street?

[*Same objection.*]

A. No, sir; I do not.

Cross-Q. 132. Have you seen Smith since that visit?

[*Same objection.*]

A. No, sir.

Cross-Q. 133. When did Smith quit the business of husking corn and take to the business of dentistry?

[*Same objection.*]

A. He quit husking corn at Hall's that fall—the fall of 1880, and I think from there he went to Marseilles—he went to school before he went to Marseilles. From there he went to Chicago to dentistry.

Cross-Q. 134. Between the time when you went west, about the latter part of last January, and the time you came east, about a month ago, did you receive any letters from anybody about the case or about Drawbaugh's talking-machine, except the letters from Drawbaugh; and if so, whom were they from?

A. No, sir; I did not, that I remember of.

Cross-Q. 135. Between the time when you went west in the latter part of last January, and the time when you came east, about a month ago, who has called on you and talked with you about this case or about Drawbaugh's talking-machine?

A. Mr. Hill.

Cross-Q. 136. Any one else?

A. Mr. George Drawbaugh was with Mr. Hill.

Cross-Q. 137. When was that?

A. That was about the 15th or 16th of September, I think.

Cross-Q. 138. Any one else?

A. Not any one else.

Cross-Q. 139. In your testimony at Philadelphia in the early part of last January you spoke of two instances when you spoke with Mr. Drawbaugh about telephones at his shop, at one of which you listened to an instrument. You have now testified that you recollect two instances—one when you went to grind cradle-scythes, and one when you met Drawbaugh at his forge; I understand that you mean that the two visits you testified about yesterday are in addition to the two visits testified about at Philadelphia; am I correct?

A. Yes, sir.

Cross-Q. 140. How long was this visit when you met Drawbaugh at his forge?

A. It was between the 8th and 15th of October, 1875. [Question repeated.] The visit was probably half an hour to an hour. I can't say positively how long I was there.

Cross-Q. 141. What other things did you talk of at that visit?

A. We were talking about cutting off corn and about different other things.

Cross-Q. 142. What other things did you talk of at that visit?

A. I don't just remember what; we talked some about his talking-machine.

Cross-Q. 143. Did he seem more interested about his talking-machines than anything else at that time, and talk more about them?

A. I thought he was; yes, sir.

Cross-Q. 144. Did you understand from him that the talking-machine was what he was principally working at at the time?

[*Objected to as calling for mere inference, the witness having already testified as to what Mr. Drawbaugh said and did about the talking-machine at that interview; and what Mr. Drawbaugh said or did is the only legal evidence.*]

A. He didn't say that he was working at it; he said that he wanted to get a patent on it.

Cross-Q. 145. Did he speak of any other of his inventions at that time?

A. He spoke of his clock.

Cross-Q. 146. What did he say about the clock?

A. I don't remember exactly what he did say about it.

Cross-Q. 147. Did he say he wanted to get his clock patented?

A. I don't remember as he did.

Cross-Q. 148. Are you able to say that he didn't say he wanted to get it patented?

[*Objected to as the witness' memory has already been exhausted on that topic, and the question now calls for something utterly immaterial and irrelevant.*]

A. I wouldn't say that he didn't say that he wanted to get it patented; but I remember very well of him saying that he would like to get the talking-machine patented.

Cross-Q. 149. Were your pecuniary circumstances such at that time

that he would naturally expect you to be able to lend him seventy-five or a hundred dollars?

A. They wasn't such, but I had been working for Mr. Walters for three years, and I suppose that he thought I had some money after leaving there.

Cross-Q. 150. Had you laid up money when you left Mr. Walters, or had you spent it nearly as fast as you earned it?

[*Objected to as entirely immaterial and irrelevant.*]

A. I shan't answer that qestion; I think it is immaterial whether I saved my money or what I did with it.

Cross-Q. 151. How much wages did you have at Mr. Walters'?

[*Same objection.*]

A. By the month, or when I left there?

Cross-Q. 152. How much did he pay you a month, and how much was coming to you when you left there?

[*Same objection.*]

A. I think he paid me fifteen dollars a month one year. I don't remember what he paid me the other two years; I don't suppose it is necessary for Mr. Storrow to know my money matters, when I left my place, or any other time.

Cross-Q. 153. In the 32d question which defendants' counsel put to you yesterday, he referred to the testimony which Mr. Wilson Walters gave here the other day. In the deposition which Mr. Walters gave, and which is printed on p. 122 of Respondents' testimony, the defendants asked Mr. Walters very particularly about your money matters; I will read you the 8th, 9th, and 10th questions which they asked him, and ask you to tell me whether that testimony is correct.

[*Objected to as entirely misrepresenting the facts, in so far as the question states that the defendants asked Mr. Walters very particularly about this witness' money matters. The defendants' counsel who examined Mr. Walters took no interest, except a friendly interest, in Mr. Kahney's money matters, and referred to them in Mr. Walters' deposition only so far as was necessary in order to explain Mr. Walters' book entry, and to show that that book entry was the last financial transaction between Mr. Walters and Mr. Kahney; and that if there was any balance due Mr. Walters at that time it was not afterwards worked out; and therefore that that transaction noted on Mr. Walters' book absolutely fixed the date of the last work which*

Mr. Kahney did for Mr. Walters, and hence fixed the time when Mr. Kahney and Mr. Basehore visited Mr. Drawbaugh's shop and saw the talking-machine.

Complainants' counsel replies that the purpose of the excuse now made in the hearing of the witness is transparent, but the Court can judge of the facts; and he further objects to this interruption of the cross-examination.

Defendants' counsel replies that the insinuation contained in this last statement put on record by complainants' counsel is untrue, uncalled for, and mere pettifogging, and that the attempt of complainants' counsel, by misrepresenting to the witness the purpose of defendants' counsel in the examination of Mr Walters, and thereby to excite the hostility of the witness to the defendants' counsel, is as transparent as thin air; and defendants' counsel does not propose to allow such an insinuation to pass without rebuke.]

A. Yes, sir; but I want to say that the reason why that money wasn't paid to Mr. Walters, was: He had a dumb mare, and he offered me all I could get over seventy-five dollars for her; I sold the mare to William Hauck; I think I got eighty-five dollars for the mare—I ain't positive—and gave him all the money; and I considered that he and I were pretty near square. We never had any settlement for the last year's work that I worked for him, but I thought I owed him about seven dollars on his account. That is the reason why I never paid him the money back which he claimed; he never said anything about it, nor I to him since.

Cross-Q. 154. So that you virtually paid him all you owed him by means of the mare transaction; is that what you mean?

[*Objected to as already fully explained.*]

A. No, sir; not according to the account in his books, because I think he kept his books straight between he and I.

Cross-Q. 155. When was that mare transaction?

[*This whole line of inquiry objected to as immaterial and frivolous, and as entirely foreign to anything inquired of in the examination-in-chief.*]

A. I think it was the winter of 1874.

Cross-Q. 156. You have testified yesterday in your 8th and following answers about listening at an instrument at Mr. Drawbaugh's shop when you went to grind cradle-scythes; how long were you at the instrument?

A. I don't remember how long I was there; but I might have been there ten fifteen or twenty minutes, or perhaps more.

Cross-Q. 157. Between the time when you testified last winter and the time when you went West in the latter part of January, I understand you to say that you had several conversations with Mr. Drawbaugh; is that the fact?

A. Yes, sir; I met him several times and talked to him.

Cross-Q. 158. Where did you meet him?

A. I met him at his house one evening.

Cross-Q. 159. Where else?

A. I met him several times here in town.

Cross-Q. 160. Where else?

A. I don't remember of meeting him anywhere else.

Cross-Q. 161. How came you to go to his house?

A. I was acquainted with his family before I went West; and I wanted to see the family.

Cross-Q. 162. Did he ask you to come to his house?

A. Not that I remember.

Cross-Q. 163. Did he come to your father's to see you?

A. Yes, sir; I think he did, since I think of it.

Cross-Q. 164. Did he ask you then to come down to his house and see him?

A. No, sir.

Cross-Q. 165. Do you know where he went after seeing you at your father's house? Did you walk out with him when he left?

A. He went to Milltown, and I went with him.

Cross-Q. 166. Went down to his house with him?

A. Yes, sir.

Cross-Q. 167. Was that in the day-time or in the evening?

A. In the evening.

Cross-Q. 168. Whom did you find at his house—whom did you see there that evening?

A. I seen Mrs. Drawbaugh there, and his children, and Clendennin's daughter was there, I think, and some other young ladies, and I think maybe Samuel Fettrow was there.

Cross-Q. 169. Who else?

A. There wasn't any one else there that I know of or remember of.

Cross-Q. 170. Were any of the Ditlow family there?

A. No, sir; I didn't see any of them.

Cross-Q. 171. Did Mr. Drawbaugh tell you whether any of them had been there that day?

[*Objected to as immaterial, irrelevant, calling for hearsay and as matter foreign to the examination-in-chief.*]

A. Yes, sir.

Cross-Q. 172. Which of them did he say had been there that day?

[*Same objections.*]

A. Abraham and Joseph Ditlow.

Cross-Q. 173. Was the letter which I now show you written and signed by you?

A. Yes, sir.

Letter put in evidence as follows:

"TRIUMPH, *March the* 8, '83.

FRIEND STORROW

I thought I would rite you A few lines to let you know that I got home all right and am feeling as good as ever and to let you know that I herd from Dan and that he wants me to Come back again and I have thought over some of my deposition and I find that I have have testified to some things that I wasnt right about and would right them if I could or would get A Chance and hope that I will I do now believe that thare was a telephone thare as far back as 1873 and know thare was and am glad that it has come to my reckalection and am very sorry that I have give in the evedens that I have I have had telephone on the brain ever since I got back and I want you to wright to me and tell me what I had beter do I can keep out of their way if you say so dont fale to right and give me advise and tell Comfort that I still Play seven up some times with this I stop your

Friend ORLANDO B. KAHNEY,
Adres Triumph Lassalle County, Ill."

Cross-Q. 174. Were the letter and envelope now shown you written by you?

A. Yes, sir; except the pencil re-direction on the envelope.

[*The letter and envelope are as follows:*]

WARNER HOUSE,
HENRY KOPPEL, *Proprietor.*

MENDOTA, Ill., *May the* 23, 1883.

"Friend Storrow I thought I would rite you and let you know that I am geting along well and to ask an advise of you whether I had better or not com and testify on the other side Dan he says he wants me to come rite and let me know what you think about it

ORLANDO B. KAHNEY

Adress Mendota Lassalle
County
Ill."

The envelope of the foregoing letter bears the card of the Warner House, Mendota, Illinois, on the upper left-hand corner, and the post-

mark "Mendota, Ill., May 23, 1883;" it is marked received at "Philadelphia, May 24, 7 P. M.;" and is addressed to "Mr. J. J. Storrow, Lafayette Hotel, Philadelphia, Pa.," and re-directed in pencil to "40 State St., Boston, Mass."

[*The two letters last put in evidence, if offered in evidence with any purpose of discrediting the witness, are objected to, first, on the ground that no proper foundation has been laid for such a proceeding; and secondly, that it is not competent for complainants to attempt to discredit a witness whom they have called and examined in this case on their own side.*

Cross-Q. 175. Did you ever receive any answer to either of these letters?

[*Same objection.*]

A. No, sir. The reason why I wrote those letters was: Comfort, before I went West, requested of me that if the defendants did want me to come on the stand again I should let him know; and he wanted to see me; and I wrote to him and got no answer; and then I wrote to Mr. Storrow.

Re-direct by Mr. Hill:

Q. Q. 176. You mean John C. Comfort, I suppose?

A. Yes, sir.

Q. Q. 177. He was helping Mr. Storrow on his side of the case, was he not?

A. Yes, sir.

Q. Q. 178. When you were at Philadelphia for the complainants last winter, did Mr. Storrow and his party have a man there named Tompkins engaged with them in the case?

A. They had a man there by the name of Tompkins. I seen him in Mr. Storrow's room, and around through the hotel at times while I was there.

Q. Q. 179. When Comfort wanted you to let him know if the defendants should ever desire to put you on the witness-stand again in this case, did you or did you not promise him that you would?

A. I promised him that I would.

Q. Q. 180, (*de bene.*) In the letter which Mr. Storrow has put in evidence, written by you to him and dated March 8, 1883, you state in substance that you believed that there was a telephone there as far back as 1873, and know there was. Did you or did you not at that time think that your visit to Mr. Drawbaugh's shop to grind the scythes might have

been as far back as during the first summer that you worked for Mr. Walters?

[*Objected to as leading.*]

A. Yes, sir.

Q. Q. 181. You had written to Mr. Drawbaugh about a month before, putting the date as 1875. You worked for Mr. Walters in 1873, 1874, and 1875. Had you or had you not at that time any means of fixing the date other than as being during the time that you worked for Mr. Walters?

[*Same objection.*]

A. This is a different time entirely that I wrote about to Mr. Storrow; it referred to a different time when I went to Milltown when I had a sore leg. I had no way of fixing the date; that was the visit I referred to in my letter to Mr. Storrow. I made a mistake in my answer to the previous question and would like to correct it. The answer should be, no, sir; it was a different time; I lived at Walters' at the same time, though.

Q. Q. 182. Then is it your present recollection that as far back as 1873 you knew of Mr. Drawbaugh's telephone or talking-machine?

[*Same objection.*]

A. I can't make any definite year; I am not certain what year I was home with a sore leg; it appears to me it was in 1873—it comes to my remembrance so.

[*Respondents' counsel states that in the cross-examination of the witness, complainants' counsel last evening by his 90th cross-interrogatory required the witness to search for and bring here this morning a certain letter written by Mr. Daniel Drawbaugh to the witness; that this morning the witness produced and handed to the examiner the letter referred to, but complainants' counsel did not offer said letter in evidence, and respondents' counsel now puts the letter in evidence as "Exhibit Drawbaugh-Kahney Letter" and requests that it be copied verbatim et literatim and printed with this deposition.*]

The letter is as follows:

"EBERLY'S MILLS, PA, *Feb.* 9, 83

Alanda Keney,

Dear Friend Your letter of 1st inst came to hand I feel glad that you now remember of seeing the talking-machine erlier than what you have stated well knowing that you where at the shop pretty often at diferent times I thought that you should know something of the machines erlier than you stated—you state that there was a man at Mendota said to you that he herd of the talking-machine in 1870 you please write me and

give me his name and adress and also please see Mr. Smith about what he knows about the matter

with mutch regards I remain yours

DANL DRAWBAUGH."

[*At request of the complainants' counsel the examiner certifies that at the opening of the examination this morning, the witness took said letter from his pocket and handed it across the table to the examiner, and that the examiner did not read it or note it upon his record in any way, not having been requested to do so; also, that complainants' counsel has not read it or had it in his possession; and that its contents have not been made known.*

Complainants' counsel further objects that it is not evidence of anything therein stated.]

Q. Q. 183. On the face of the paper "Exhibit Drawbaugh-Kahney Letter," I observe some loose figuring, done partly with an ordinary lead pencil, and partly with a colored indelible pencil; was, or was not, that figuring on the letter when you received it through the mail?

A. It was not on.

Q. Q. 184. Who put it on?

A. I did myself.

Q. Q. 185. Where and when?

A. Out in the west; I couldn't tell when I did do that—between the time I got the letter and the time of starting back here; I remember of doing the figuring, though, but I can't remember when it was.

Q. Q. 186. Does that figuring relate in any way to the contents of the letter, or to anything concerning this suit, or your evidence in this suit, or not?

A. I don't know that it does; if you let me look at it I can, may be, tell you. [*Witness looks at the letter.*]

A. No; it does not.

[*Defendants' counsel requests the examiner to omit the loose figuring in printing the letter, as it constitutes no part of the letter written by Mr. Drawbaugh to the witness.*]

Re-cross by Mr. Storrow:

Re-cross-Q. 187. Will you please state what you remember of any visit you think you made to Drawbaugh's shop, and which you state in the letter occurred in 1873, and state what knowledge you have concerning his having a talking-machine there?

A. I remember of the time when I was at home sick, or with a sore leg, rather—I had an abcess on my leg at the time—it was either in 1872

or 1873, I think; I am not altogether sure; it might have been in 1874; I think I can fix the date by Doctor Bowman's book; Doctor Bowman attended me. After I got so I could walk I went to Drawbaugh's shop, and I seen there the same wires in the same place where they was when we ground the cradle-scythes, and Drawbaugh used them to talk to me through or with.

Re-cross-Q 188. Did you see anything of any talking-machines at that visit?

A. I only seen those wires, and that that I held to my ear I seen lying there. I remember of seeing that; that wasn't to it then, I believe; it was only the wires there in the corner; there was a mistake there.

Re-cross-Q. 189. Did you see any talking-machine at the time of that visit, which you think was in 1873?

A. No, sir; I never had seen any; only going down afterwards and seeing those wires made me think it was the same, and that he had his telephone or talking-machine at that time.

Examination taken, reduced to writing, and by the witness affirmed and subscribed to before me, this 10th day of November, 1883.

FRED. M. OTT,
Examiner.

ORLANDO B. KAHNEY.

Adjourned until Tuesday, November 13, 1883, at 2.30 P. M.

November 13, 1883, 2.30 *P. M.*

Examination resumed. Present, Mr. Howson for complainants, and Mr. Hill and Mr. Jacobs for respondents.

SAMUEL M. DECKMAN, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

My age is forty-seven years; residence, Lower Allen township, Cumberland county, Pennsylvania; occupation, farming.

Q. 1. How long have you lived on the farm on which you now live?

A. Ten years.

Q. 2. On what date did you first take up your residence on that farm?

A. On the 4th day of March, 1873.

Q. 3. Do you own that farm?

A. Yes, sir.

Q. 4. Does that farm lie along the Yellowbreeches creek?

A. Yes, sir.

Q. 5. Is it above or below Boyer's forge?

A. Down the creek from the forge—below.

Q. 6. How far from the forge is your house?

A. About two and a half miles; that is, about two and a half miles along the creek; it is not quite that far straight.

Q. 7. When did you become the owner of the farm on which you live?

A. I bought it in the fall of 1872, at public sale, and moved there on the 4th of March, 1873, and got my deed on the 5th day of April, 1873.

Q. 8. If you have your deed here will you please hand it to the examiner, in order that he may certify upon the record the date of its execution?

A. Here it is.

[*The witness produces deed dated April* 5, 1873, *from Levi Nutman, and Catharine, his wife, Frederick Deckman, and Susannah, his wife, George Danner, and Sarah, his wife, George S. Fink, and Catharine, his wife, and Barbara Deckman, wife of Samuel M. Deckman, to Samuel M. Deckman, acknowledged April* 5, 1873, *before Joseph Leas, J. P.*]

Q. 9. Have you lived on that farm right along all the time since you moved on to it on March 4, 1873?

A. Yes, sir.

Q. 10. During the time which you have lived on that farm where you now live, have there ever been any freshets on the Yellowbreeches creek? If so, in what year was the greatest freshet that has ever occurred during the time you have lived there?

A. In 1873.

Q. 11. As near as you can tell, at what time of the year did that great freshet of 1873 happen?

A. About the latter part of July; between that and the fifteenth of August; somewhere in that neighborhood, as near as I can get at it.

Q. 12. How do you get at that as being the time of year when the freshet happened?

A. The way I get at that is that there was a great many watermelons came down the creek; and I was raising some watermelons myself. It was about the time watermelons was getting ripe.

Q. 13. Did the flood carry away any of your watermelons?

A. No, sir.

Q. 14. Did you have any information at the time as to whose watermelons they were that came down the creek?

[*Objected to as inquiring for hearsay.*]

A. Yes, sir; Wire and Sipe's.

Q. 15. Did you have any information at the time as to whether the freshet did or did not flood Boyer's forge?

[*Same objection.*]

A. Yes, sir; it did; I heard people talk about it; I didn't see it myself; I wasn't there at the forge.

Q. 16. Did you have any information at the time as to whether the flood did or did not carry away some of the foot-bridges along the Yellowbreeches creek?

[*Same objection.*]

A. Yes, sir; it did.

Q. 17. Mention any foot-bridges that you understood at the time were carried away in whole or in part by that flood?

[*Objected to so far as the inquiry extends beyond the witness' own knowledge.*]

A. A half of the bridge at Zinn's clover mill was taken away at that time; also, that at Studebaker's mill, or Etter & Shanklin's, as it is called now.

Q. 18. Did that high water flood any portion of your farm? If so, what portion?

A. Yes, sir; about six acres.

Q. 19. Did anybody have occasion to go over that flooded portion of your farm while the water was up? If so, how did they get over it?

A. Not that I know of, just at that time. If there would have been, they could have gone around by what is called Miller's mill.

Q. 20. When those watermelons came down to your place on the flood, did anybody pick any of them up? If so, how did they get them?

A. Yes, sir; my son-in-law lived with me that year; he boated around on my bottom land there and gathered them up.

Q. 21. What was the condition of the watermelons which he thus gathered up—were they ripe or unripe?

A. There was some few that abody could eat, but there was none of them that I would call real ripe—the greater part of them were green.

Q. 22. How far is your place below Kunkel's mill at Lisburn?

A. About three miles.

Q. 23. During that flood, did you or your farm hands have to go to or around any of your farm buildings in a boat?

A. No, sir.

Q. 24. How far are they above the ordinary level of the Yellowbreeches?

A. I would suppose about twenty or twenty-five feet.

Q. 25. The six acres which you say were flooded, I suppose were the bottom-lands which your son-in-law boated over while picking up the watermelons; am I correct or not?

A. Yes, sir.

Q. 26. How high are those bottom-lands above the ordinary level of the Yellowbreeches?

A. About six feet, I guess, as near as I can get at it.

Cross-examined by Mr. Howson:

Cross-Q. 27. How far is your farm from Zinn's clover-mill, and how far from Etter & Shanklin's?

A. About half a mile from Zinn's clover-mill; I guess it would be about four and a half miles, or somewhere in that neighborhood, from Etter & Shanklin's.

Cross-Q. 28. Is Zinn's mill above or below your farm on the stream?

A. Half a mile above.

Cross-Q. 29. And Etter and Shanklin's is four and a half miles, or thereabouts, below your farm; is that it?

A. Yes, sir.

Cross-Q. 30. Were you at Etter & Shanklin's during the time of this freshet?

A. No, sir.

Cross-Q. 31. Then, when you speak of the bridge at Etter & Shanklin's being carried, or partly carried, away, you are speaking simply from recollection of what you heard; is that it?

A. Yes, sir.

[*In view of the last answer, the witness' answer to interrogatory* 17 *is objected to by Mr. Howson as not evidence.*]

Re-direct by Mr. Hill:

Q. Q. 32. When did you hear that the bridge at Etter & Shanklin's mill was carried away by that flood?

[*Objected to as incompetent.*]

A. The same time the one went away at the clover-mill; at the same time the flood was I heard it said that it had gone away.]

[*Answer objected to by Mr. Howson as not evidence.*]

Q. Q. 33. Has your bottom-land ever been flooded by the Yellow-breeches since that time?

A. Some of it—not near so high, though.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 13th day of November, 1883.

FRED. M. OTT,
Examiner.

S. M. DECKMAN.

SAMUEL M. DECKMAN, *being recalled by Mr. Howson for further cross-examination, saith:*

Re-cross-examined by Mr. Howson:

Re-Cross-Q. 34. When you say that Zinn's clover-mill was about half a mile above your place, do you mean by the road or by the course of the stream?

A. By the road.

Re-Cross-Q. 35. How much, if any farther, by the course of the stream?

A. It is a little further, but very little difference.

Re-Cross-Q. 36. Had you any occasion to visit that bridge during or immediately after the freshet?

A. Yes, sir; right after.

Re-Cross-Q. 37. Do you know of any other occasion of that bridge being wholly or partly carried away?

A. Yes; in the next spring following, it was knocked down by the ice; I chained it fast myself on the ice.

Re-Cross-Q. 38. Any other?

A. No, sir.

Re-Cross-Q. 39. Is that particular bridge, if you know, public or private property?

A. Public.

Re-Cross-Q. 40. How far, if you know, is that bridge by water above Eberly's Mills or Milltown?

A. It might probably be five miles; the creek is very crooked.

Re-Cross-Q. 41. How far is it above Miller's or Boyer's mill?

A. Around by the creek it is about a mile and a quarter, and the same distance by road. The road runs right around by the creek.

Re-re-direct by Mr. Hill:

Q. Q. Q. 42. When you were at Zinn's clover-mill immediately after the flood of 1873, did you notice that the foot-bridge had been carried away?

[*Objected to as leading.*]

A. Yes, sir; that is what I had went for. I was told by my nearest neighbor, Andrew Schell—now dead and gone—that the half of the bridge had been carried away, and I went up to see.

Examination taken, reduced to writing, and by the witness subscribed to before me, this 13th day of November, 1883.

FRED. M. OTT,
Examiner.

S. M. DECKMAN.

JACOB S. KUNKEL, *being produced, affirmed, and examined, saith:*

Examined by Mr. Hill:

Q. 1. Are you the same Jacob S. Kunkel who was examined as a witness for the complainants in December, 1882, at Philadelphia, and whose deposition is printed on pages 749 to 757 and again on pages 767 and 768 of complainants' record?

A. Yes, sir.

Q. 2. In your deposition last winter you testified that you had owned and run the mills on the Yellowbreeches, at Lisburn, since the month of April, 1868; will you tell us in what year out of the entire fifteen years since April, 1868, there has occurred the greatest flood on the Yellowbreeches?

A. In 1873.

Q. 3. Will you tell us about what time of the year it was in 1873 that that flood occurred?

A. The best I can do is—it was about the time watermelons were ripe—some of them were ripe and some not; I don't know whether half of them were ripe—but at the time of the flood we had a wagon-load of them on the barn floor that were ripe; I wouldn't like to just give the date and couldn't.

Q. 4. Have you ever heard the people around where you live apply

any particular name to that flood in order to distinguish it from other floods; if so, by what name has that great flood of 1873 since been known?

A. It always went by the name of watermelon flood.

Q. 5. Why did it get that name?

A. I couldn't give you any other reason, only because it had taken a lot of watermelons away there.

Q. 6. Your mills there are right at the end of the village of Lisburn are they not?

A. Yes, sir.

Q. 7. If you remember any parties whose watermelons were carried away by that flood, will you give us their names?

A. I know of nobody else's but George Sipe's and John Wire's.

Q. 8. How far was their flooded watermelon patch from your mills, and was it above or below the mills?

A. Above the mills, probably two hundred yards, as near as I can tell.

Q. 9. Was that land which they cultivated for watermelons that year known as the "island," or sometimes called by that name?

A. Yes, sir.

Q. 10. Do you know who owned that land at that time; if so, who?

[*Objected to as not seeking the best evidence.*]

A. I did.

Q. 11. Will you tell us whether that was or was not, the only time that Sipe and Wire ever cultivated that land for watermelons, and had their watermelons interfered with by a flood on the Yellowbreeches?

A. That was the only time since I am there.

Q. 12. If you know anything of any of their watermelons having been picked up below your mills at that time by people in boats, will you tell us what you know about it?

A. I don't remember just who they were, but I know that my own boy was along, and a number of other boys there in town; they took the boat around the mill above, and in through a pair of bars at the meadow; they were after watermelons.

Q. 13. I judge by your last answer, that the meadow was fenced, and that they went over it in boats, taking their boat through the fence where the bars were; am I correct or not?

A. Yes, sir.

Q. 14. Was the water high enough to permit a boat to be navigated around your mills at that time?

A. Yes, sir.

Q. 15. Do you remember of any foot-bridges being carried away by that flood; if so, what ones so far as you remember?

A. I remember of that one, at what was called Zinn's fulling-mill or factory; I have not been there to see it, but I have heard and know through the supervisor that they put one up there.

[*Answer objected to by Mr. Howson as not evidence.*]

Q. 16. Are there two mills on the Yellowbreeches, known as Zinn's mill, one being a fulling-mill and the other a clover-mill?

A. Yes, sir.

Q. 17. How far are they apart?

A. I am not acquainted along the creek, but by the road, I would not suppose it would be more than a mile and a half, or may be not that.

Q. 18. Which one of them is the higher up on the Yellowbreeches?

A. The fulling-mill.

Q. 19. About how far, is the fulling-mill below your mills?

A. Along by the road they call it three miles; it is further around by the creek.

Cross-examined by Mr Howson:

Cross-Q. 20. Do you know whether or not in 1873, there was a foot-bridge at Zinn's clover-mill?

A. I do not.

Examination taken, reduced to writing, and by the witness affirmed and subscribed to before me, this 13th day of November, 1883.

FRED. M. OTT,
Examiner.

JACOB S. KUNKEL.

Adjourned until November 14, at 10, A. M.

NOVEMBER 14, 11, A. M.

Examination resumed.

Present, Mr. Storrow and Mr. Howson, for complainants, and Mr. Hill and Mr. Jacobs, for respondents.

AUGUSTUS KAHNEY, *being produced, affirmed, and examined, saith:*

Examined by Mr. Hill:

My age is twenty-eight years; residence, Lower Allen township, Cumberland county, Pa.; occupation, day's laborer.

Q. 1. In March, 1883, two witnesses named Amos Frownfelter and William Frownfelter, or William C. Frownfelter, Amos Frownfelter's son, were examined at Philahelphia on behalf of the complainants in in this case; state whether or not you are personally acquainted with said Amos Frownfelter and William Frownfelter, his son.

A. Yes, sir.

Q. 2. How long have you known them?

A. I have known them since 1874—further back than that, but I can't just remember the date.

Q. 3. Do you know Daniel Drawbaugh, of Eberly's Mills?

A. Yes, sir.

Q. 4. How long have you known him?

A. I have known him since 1872.

Q. 5. Will you tell us whether you ever did or did not meet Mr Amos Frownfelter in Daniel Drawbaugh's shop at Eberly's Mills?

A. Yes, sir; I did.

Q. 6. Was Mr. Daniel Drawbaugh present in the shop at the time?

A. Yes, sir.

Q. 7. Do you remember whether or not anybody else was present in the shop except Mr. Daniel Drawbaugh, Mr. Amos Frownfelter, and yourself? If so, who was it?

A. Yes, sir; Mr. Frownfelter's mother and different other ones that I can't remember at present.

Q. 8. Mr. Frownfelter's mother was a pretty old lady, was she not?

A. Yes, sir.

Q. 9. Is Mr. Frownfelter's mother living or dead?

A. She is dead.

Q. 10. How did she come to her death?

A. A horse running off and throwing her out of a carriage caused the injury.

Q. 11. Have you any idea how long that accident occurred to her after you saw her and her son Amos in Mr. Drawbaugh's, as you have testified?

[*Objected to as asking for guess work, not evidence.*]

A. The same day the accident happened.

Q. 12. In what story of the shop did you meet Mr. Frownfelter and his mother that day?

A. The second story.

Q. 13. That was the upper story of the shop, was it not?

A. Yes, sir; the second floor.

Q. 14. In what part of that floor did you see them?

A. I seen them coming out of the second room into the first room up stairs.

Q. 15. What room do you call the first room up stairs? Where is it situated?

A. I call it the south-west corner.

Q. 16. Do you mean the corner up the Yellowbreeches, or the corner down the Yellowbreeches?

A. I mean that corner that you go into the shop; I mean the place you go into the room; the corner of the shop is the same; you go in there, too.

Q. 17. There is a stairway inside of the building leading from the first floor or story up to the second floor or story. You say you saw them coming out of the second room into the first room. I want to know how near that first room is to the top of that stairway.

[*Objected to as a leading and improper mode of inquiry.*]

A. Right off of the stairway into the room.

Q. 18. The upper end of the stairway, then, was in that room which you call the first room, was it?

[*Same objection.*]

A. The stairway door, right at the head of the stairs, opened into the room.

Q. 19. Was it a large or small room—that room right at the head of the stairs?

A. It was an ordinary sized room.

Q. 20. You say you saw them coming out of the second room into that first room; was the room that you call the second room a large or a small room?

A. It was a little larger than the first room.

Q. 21. When they went out of the second room into the first room, where did they then go?

A. They went down the steps then, and that was the last I seen of them.

Q. 22. You stated in answer 15, referring to what you called the first room, that you would call it the south-west corner; it has been established in evidence that the stairway, which you refer to as coming up from the first story to the second story, was in the north-east corner of the

building. Assuming that stairway to have been in the north-east corner of the building, I should judge that you had got the points of the compass reversed, and the room which you called the first room was in the north-east corner of the building; what would you say about that upon further reflection?

[*Objected to as leading and incompetent.*]

A. I guess it is more north-east than south-west.

Q. 23. At that time while you were in Mr. Drawbaugh's shop, were you in that room at the top of the stairs or not?

A. Yes, sir.

Q. 24. When you were in the room there at the top of the stairs that day, do you remember seeing anything in that room; if so, what?

A. No, sir; nothing in particular I don't.

Q. 25. Tell us whether you did, or did not, see any of Mr. Drawbaugh's talking-machines around in the shop that day while you were there.

[*Objected to as leading, as unwarrantable in view of the witness' last answer, and as calling for new matter not in rebuttal.*]

A. I did.

Q. 26. In what room were they when you saw them there that day?

[*Objected to as not in rebuttal. This objection to apply to all succeeding questions upon the same line of examination.*]

A. The second room.

Q. 27. That is the room that you saw Mr. Frownfelter and his mother coming out of?

[*Objected to as leading.*]

A. Yes, sir.

Q. 28. Where were the talking-machines in that room that day when you saw them?

A. About two feet and a half from the wall, on a bench or table of some kind.

Q. 29. Lying in open sight, so that anybody who might happen to be in the room could see them, or not?

[*Objected to as leading.*]

A. Yes, sir; in open sight.

Q. 30. Was that the first time you had ever seen Mr. Drawbaugh's talking-machines, or not?

A. No, sir.

Q. 31. When had you seen any of them before that time?

A. I recollect of seeing them in the spring of 1875.

Q. 32. When did you see them in the spring of 1875?

A. I seen them up-stairs in Drawbaugh's machine shop, in the first room.

Q. 33. How happened you to be there in the machine-shop at that time—in the spring of 1875?

A. I was working for the Axle Company.

Q. 34. Do you remember how long you worked for the Axle Company?

A. About nine or ten days—along there.

Q. 35. Who employed you to work for the Axle Company at that time?

A. Mr. Wilson Bear.

Q. 36. Who paid you for that work?

A. Mr. Bear gave me a check for the work.

Q. 37. Did you ever work for the Axle Company afterwards, or not?

A. No, sir.

Q. 38. Will you tell us what kind of work you did for the Axle Company at that time—in the spring of 1875?

A. I helped to get the machinery in the shop—some part of it—and to clean up the machinery.

Q. 39. Did you do that work before or after the machinery was set in operation making axles?

A. I done it before I seen any axles made.

Q. 40. You say that while you were working there, getting in machinery and cleaning it up for the Axle Company, in the spring of 1875, you saw some of Drawbaugh's talking-machines, in what you call the first room on the second floor of the shop. Do you remember how those talking-machines looked which you saw there at that time. If so, will you please describe them as far as you remember them?

A. Yes, sir; one was about two inches through, and, as near as I can tell, from an inch to two inches high, with a mouth-piece on top of it. The other one was about six inches through, as near as I can tell, and an inch, or a little over an inch, through—that is, high—and had a mouth-piece on the side or top, towards the edge of it.

Q. 41. What was the shape of the mouth-piece which you saw on the larger instrument at that time?

A. It was hollowed out a little—the shape of a spoon.

Q. 42. Did you see anybody make those instruments, or were they made before you saw them at that time?

A. No, sir; I didn't see anybody make them.

Q. 43. After that time, do you remember ever again seeing those two instruments, or others which looked just like them? If so, where was it, and who showed them to you?

A. I did; down at the United States hotel, at Harrisburg; John C. Comfort showed them to me.

Q. 44. Do you, or do you not, remember seeing them at any time after you saw them at Drawbaugh's shop, in 1875, until Mr. Comfort showed them to you at the United States hotel, at Harrisburg?

A. I saw talking-machines there at the shop; I don't know whether they were the same ones or not.

Q. 45. When Mr. Comfort showed them to you at the United States hotel, did you, or did you not, tell him that you had seen them at Mr. Drawbaugh's shop?

[*Objected to as immaterial and incompetent, and also as leading.*]

A. I told him I had seen them—instruments like them, I told him.

Q. 46. Have you, or have you not, ever seen them since Mr. Comfort showed them to you at the United States hotel, as you have testified?

A. I have not seen them machines.

Q. 47. Mr. Ott, the examiner here, has a collection of Mr. Drawbaugh's talking machines over at his office across the street. Will you go over there with him and examine his collection, to see if you can find the machines which you saw at Mr. Drawbaugh's shop in the spring of 1875, and if you find them, get him to bring them over here with you?

[*Objected to as incompetent.*]

A. Yes, sir; I will.

[*The examiner certifies that he and the witness thereupon went to his office without either counsel; and on being shown the collection of exhibits, witness said [taking up "A"]: "This is the one, and" [taking up "E"] "this is the other machine, as near as I can recollect."*]

[*Answer and certificate also objected to by Mr. Storrow as incompetent.*]

Recess until 2 P. M.

Examination resumed at 2 P. M.

[*Complainants' counsel renew objection to the entire foregoing deposition as new matter not in rebuttal and cross-examine, de bene esse.*]

By Mr. Howson:

Cross-Q. 48. How far is your home from Mr. Drawbaugh's shop?

A. A little over a mile, as near as I can tell.

Cross-Q. 49. How long have you been living in that locality?

A. Since last spring a year we have lived in the house we live in now.

Cross-Q. 50. Where did you live before that?

A. I lived in the house that belongs to Mr. Yetter.

Cross-Q. 51. How far is that from Mr. Drawbaugh's shop?

A. The houses are standing about between two and three hundred yards apart—I mean the house I now live in and Mr. Yetter's house.

Cross-Q. 52. And from what time to what time did you live in that house?

A. From the fall of 1881 to the spring of 1882.

Cross-Q. 53. Where were you living and for how long before you were living in the Yetter house?

A. On the farm of Mr. Bricker's; I moved there in the spring of 1880, and moved away in the fall of 1881.

Cross-Q. 54. How far is that farm from Mr. Drawbaugh's shop?

A. I am not able to say positively how far; I would suppose it to be between five and six miles.

Cross-Q. 55. You have referred in your testimony-in-chief to seeing Mr. John C. Comfort at the United States hotel in this city, and have stated that you told him about having seen some of Mr. Drawbaugh's talking-machines. Tell us what else you recollect telling Mr. Comfort on that occasion.

[*Objected to as new matter not inquired of in examination-in-chief.*]

A. There wasn't anything else that I remember of. We were talking, of course, but I can't just remember what passed between us.

Cross-Q. 56. In what year was it, according to your recollection, that you met Mr. Amos Frownfelter and his mother at Mr. Drawbaugh's shop?

A. 1877.

Cross-Q. 57. Where did you live before moving to Bricker's farm?

A. On Martin Best's farm.

Cross-Q. 58. And lived there during what time?

A. I moved there in the spring of 1879, and moved away in the spring of 1880.

Cross-Q. 59. How far is Mr. Best's farm from Mr. Drawbaugh's shop?

A. I judge it is a little over a mile.

Cross-Q. 60. You remember this—Daniel Drawbaugh and other gentlemen coming to see you about this matter of Drawbaugh's talking-machine—don't you?

A. Yes, sir.

Cross-Q. 61. Who were the parties with Mr. Drawbaugh on that visit?

A. Mr. Drawbaugh, Mr. Jacobs, and Mr. Bowman.

Cross-Q. 62. That was while you were living on Bricker's farm, wasn't it?

A. Yes, sir.

Cross-Q. 63. Who is the Mr. Bowman that you refer to? What is his name, and what is he?

A. Harry Bowman, justice of the peace at Camp Hill.

Cross-Q. 64. What did these gentlemen show you on that occasion?

A. I can't remember; they showed me a tin can; and I can't remember whether they showed me anything else or not.

Cross-Q. 65. They came twice to Bricker's farm to see you, didn't they?

[*Objected to as immaterial and irrelevant, and new matter not referred to in the examination-in-chief.*]

A. Yes, sir; they were there twice; I don't know whether it was the same party.

Cross-Q. 66. You know that Mr. Drawbaugh was there twice, don't you?

A. I know Mr. Drawbaugh was there twice, but don't know whether the balance of the party were or not.

Cross-Q. 67. Where were you living, and how long, before you were living on the Martin Best farm?

A. I lived in Martin Best's tenant-house from the fall of 1875 to the spring of 1879.

Cross-Q. 68. How far is that from Mr. Drawbaugh's shop?

A. I suppose it is close on to a mile.

Cross-Q. 69. You remember having a talk with Mr. George Drawbaugh about talking-machines and about this case, don't you?

[*Objected to as irrelevant and immaterial, and as new matter not referred to in the examination-in-chief.*]

A. No, sir; not in particular I don't.

Cross-Q. 70. Do you wish us to understand that you have no recollection of having any talk with George Drawbaugh about talking-machines and about this case at any time?

[*Same objections.*]

A. No, sir; not that I recollect of.

Cross-Q. 71. You are a brother, are you not, of Mr. Orlando Kahney who has heretofore testified in this case?

A. Yes, sir.

Cross-Q. 72. That is your signature, is it not, which appears at the end of the written paper which I now hand you?

A. Yes, sir.

Cross-Q. 73. The paper appears to have been written in Harrisburg on the 9th of May, of this year, and to have been signed by yourself and Mr. John C. Comfort. You recollect that paper being so written, and signed by yourself and Mr. Comfort, don't you?

A. Yes, sir; I remember of the paper being written, and signed by myself and Mr. Comfort.

Cross-Q. 74. Whereabouts was it that that paper was signed by you?

A. Down at the United States Hotel, at Harrisburg.

[*Complainants' counsel offer the paper referred to in evidence as "Exhibit Augustus Kahney Written Statement," and request that the examiner will embody a copy of the document in the body of this witness' deposition.*

Paper objected to by Mr. Hill as incompetent, and so far as it contains any statements relating to alleged remarks of George Drawbaugh it is objected to as mere hearsay.]

The paper is as follows:

"I worked for the Axle Compy 9 or 10 days (before the outside steps were put up to the old shop) cleaning the machinery that was brought there—I was paid by Wilson Bear—at that time Dan had no talking-machine to my knowledge, nor do I believe any were there and known to the public or been talked about and I not have known it. I was married in 1875 on the 14th day of Nov. I was hired with Martin Best—commenced to keep house in the fall of 75 in Jas. Best tenant House lived there till Ap 79—moved to Martin Bests creek farm spring of 79—lived there till spring of 1880—moved to C. Bricker's farm remained there till fall of 1881 moved to H. Yetters House lived there till Ap 1882 moved to where I now reside (in the Yellow Tavern)

Saw at Dans shop a machine to ring bells, a machine to tell how much electricity was in a man—saw the nail machine in the cellar. Saw the cider mill—Saw his shocking machine—Saw his bagfolder—Saw his machine to wrap wire with (insulating machine.) Saw his electric clocks—Was at his shop very often first saw a talking-machine when I resided at Martin Bests farm some time between Ap and August. Saw a machine that Dan called his talking machine it looked like a copy of "E," only I think it had brass binding-posts also saw "A" (copy)—never heard my brothers talk about a machine—Dan and Jacobs came to see me with Harry Bowman while I lived at Bricker's farm they were there twice —I was only home once—

George Drawbaugh told me he did not know when he had seen the talking-machine, but that they came after him time and again, and at last Shank came he had to go—Dan and all were at him and he would not go. Said he did not know when he had seen it first and that he was not going to go and swear to a lie for them.

I never talked through a machine at the shop nor heard any one else at it.

JNO. C. COMFORT. AUGUSTUS KAHNEY,

Harrisburg, May 9, 1883.

Re-direct by Mr. Hill, de bene esse:

Q. Q. 75. Referring to this paper which has just been put in evidence as "Exhibit Augustus Kahney Written Statement," who wrote the paper?

A. John C. Comfort.

Q. Q. 76. Where?

A. Down at the United States hotel, Harrisburg.

Q. Q. 77. Who was present at the time?

A. No one but Mr. Comfort and I.

Q. Q. 78. Did you read over the paper at the time, or did Mr. Comfort read it over to you?

A. No, sir; I did not; Mr. Comfort read it over.

Q. Q. 79. It contains a statement, in substance, that at the time when you cleaned the machinery for the Axle Company, Dan had no talking-machine to your knowledge, nor did you believe that any were there and shown to the public, or been talked about and you not have known it; did you, or did you not, make such a statement to Mr. Comfort?

[*Objected to as leading, and as incompetent in view of the witness' answer to cross-interrogatory* 55.]

A. I did not; I told him I didn't recollect of seeing any there at the time.

Q. Q. 80. You have now testified that when you were at work for the Axle Company in the spring of 1875, you saw talking-machines there, and that the "Exhibit 'A'" is one, and as near as you can recollect "Exhibit 'E'" is the other; is that testimony true?

[*Objected to as incompetent and as not re-examination.*]

A. Yes, sir.

Q. Q. 81. As you did not recollect about seeing talking-machines there in the spring of 1875, when you had the interview with Mr. Comfort at the United States hotel in May, 1883, but now recollect the fact and are able to identify the machines, will you please tell us when and how the thing came back to your recollection?

[*Objected to as above.*]

A. I got to studying over the matter, trying to find out; and I found out where I lived, and when I came there and seen them there and got talking about talking-machines. I can't just exactly say when it came to my recollection.

Q. Q. 82. Tell us as near as you can when it came to your recollection that you had seen the machines "A" and "E" there in the spring of 1875.

A. In the latter part of June, 1883.

Q. Q. 83. From the time when you had the interview with Mr. Comfort at the United States hotel on May 9th, till the time when these things came back to your recollection in or about the latter part of June following, had Mr. Drawbaugh or anybody on his side of the case interviewed you?

[*Objected to as leading.*]

A. No, sir; not to my recollection.

Q. Q. 84. Then was it this interview with Mr. Comfort that stirred your mind up and finally enabled you to recall these things to your memory?

[*Objected to as leading.*]

A. Yes, sir; it was partly that.

Q. Q. 85. Are you now entirely clear in your recollection of seeing talking-machines there at Mr. Drawbaugh's shop, in the spring of 1875, and that the machines were such as you have described and identified?

[*Objected to as leading and incompetent.*]

A. Yes, sir.

Q. Q. 86. The paper "Exhibit Augustus Kahney Written Statement," purports to set forth certain things that George Drawbaugh told you, as follows:

"George Drawbaugh told me he did not know when he had seen the talking-machine, but that they came after him time and again; and at last Shank came, and he had to go. Dan and all were at him and he would not go. Said that he did not know when he had seen it first, and that he was not going to go and swear to a lie for them."

Will you tell us whether Mr. Comfort wrote that statement down just as you gave it to him, or not?

[*Objected to as leading.*]

A. No, sir; he did not. I hadn't talked to Drawbaugh about the talking-machine, to my recollection, at all—anything about the talking-machine.

Q. Q. 87. Did you, or did you not, tell Mr. Comfort anything that George Drawbaugh had said to you?

A. No, sir; I told him that I heard other ones say so. I never told him that George Drawbaugh had told me anything.

Q. Q. 88. Do you mean that you heard other people say that George Drawbaugh had told somebody something of that kind?

A. Yes, sir.

Q. Q. 89. From the facts stated in the paper, that they came after him time and time again, and at last Shank came and he had to go, taken with the fact that Mr. Shank is the constable who has served the subpœnaes upon the defendants' witnesses, compelling them to come here and testify, I should infer that the remarks which the paper attributes to Mr. George Drawbaugh, if ever made by him at all, were made after he had been on the witness-stand and testified in this case; how did you understand that matter?

[*Objected to as leading, argumentative, and calling for inference, not fact.*]

A. I don't understand much about it, more than they said that he didn't want to come. Parties said that he didn't want to come.

Q. Q. 90. The substance of it was that he didn't want to come and testify; that he had to be compelled to come by sending the constable after him; and that when he did come he wouldn't testify to anything but the truth; is that about it?

[*Same objections, and because the witness' knowledge or recollection has been already exhausted.*]

A. No, sir; I didn't tell Mr. Comfort that he was compelled to come—that the constable compelled him to come; I told him that I was told he didn't want to come till the constable came after him.

Q. Q. 91. And you never heard Mr. George Drawbaugh say anything about it, but all you told Comfort was what you heard others say that he had said; is that the fact?

[*Objected to as leading.*]

A. Yes, sir.

[*So far as the paper "Exhibit Augustus Kahney Written Statement" purports to contain any alleged remarks of George Drawbaugh, it is objected to by Mr. Hill; first, as setting forth incorrectly what the witness stated to Mr. Comfort, and secondly, as not merely hearsay, but hearsay of hearsay.*]

Examination taken, reduced to writing, and by the witness affirmed and subscribed to before me, this 14th day of November, 1883.

FRED. M. OTT,
Examiner.

AUGUSTUS KAHNY.

Adjourned at 4 P. M. until November 15, at 10 A. M.

November 15, 1883, 10 *A. M.*

Examination resumed pursuant to adjournment.

Present, Mr. Storrow and Mr. Howson for complainants, and Mr. Jacobs for respondents.

GEORGE S. SIPE, *being produced, sworn and examined, saith:*

Examined by Mr. Jacobs:

My age is forty-five; residence, Conewago township, York county, Pa.; occupation now, basket-making—that is my trade.

Q. 1. Mr. Charles I. Boyer has testified in this case [see respondents' printed sur-rebutting record, page 189,] that George Sipe worked for him in a coaling for the Lisburn forge, up to and including August 5, 1873, and then quit; are you the George Sipe referred to?

A. I am the George Sipe myself; yes, sir.

Q. 2. For what purpose did you quit working for Mr. Boyer?

A. On account of my watermelons.

Q. 3. Were you at that time engaged in growing watermelons? If so, where?

A. Yes, sir; on Jacob Kunkel's island at Lisburn, right between the

race-bridge and the wagon-bridge, on the right-hand side of the road as you go to Lewisbury—right between Cumberland and York counties.

Q. 4. Had you a partner?

A. Yes, sir; John Wire. He was married to my step-sister.

Q. 5. Did any accident occur to your watermelons? If so, state what it was.

A. Yes, sir; it was a flood on the Yellowbreeches.

Q. 6. Was that after or before you quit work for Mr. Boyer?

A. Afterwards.

Q. 7. How long afterwards?

A. As near as I can remember, it was about a week or ten days; I wouldn't tell that as a fact, but as near as I can remember.

Q. 8. Were any of your melons carried away by the flood?

A. Yes, sir.

Q. 9. Many, or few?

A. Between six and eight hundred was taken away by the flood, and we catched some that we might as well have let go again; they were not worth anything; we made a cutting match of them afterwards.

Q. 10. Did you ever grow watermelons on Kunkel's island at any other time than the time you have spoken of?

A. No, sir; never before nor afterwards.

Q. 11. Will you give us some idea of the extent of that flood?—how far the creek rose above its banks and flooded the adjoining roads and lands.

A. I couldn't give you the regular water-mark, but at some places I could shoot pretty close. She might have, perhaps, varied in some spots about that place between seven and ten feet, anyhow.

Q. 12. Was the road that crosses the creek by the bridge under water?

[*Objected to as leading.*]

A. Yes, sir.

Q. 13. Can you give us any idea of the depth of the water over the road?

A. I wouldn't say for certain, but I think it run over the fourth rail of the post fence along the road.

[*Answer objected to by Mr. Howson as not evidence.*]

Q. 14. How was the water about Kunkel's mill?

A. It was pretty deep in places; it run in the mill-room below.

Q. 15. Do you know of any bridges being carried away by that flood?

[*Objected to as leading.*]

A. Yes, sir.

Q. 15. Where?

A. At Zinn's fulling-mill. It most appears to me both of them had went; I wouldn't say for certain as to the lower one, but the upper one I am sure.

Q. 16. What do you mean by the lower one?

A. The lower one is at the cloverseed-mill—that we used to call the lower one. I mean Zinn's cloverseed-mill—at least it was called Zinn's at that time, I think.

Q. 17. How do you know the upper one was taken away by that flood?

A. I was going to cross and I couldn't.

Q. 18. When were you going to cross?

A. A couple of days after the flood; I can't tell you exactly how long it was, but it was only a couple of days afterwards.

Q. 19. Where were you living at the time of the flood?

A. At Lisburn.

Q. 20. When did you move away?

A. In 1873.

Q. 21. What time in 1873?

A. In October, I think.

Q. 22. Have you lived at Lisburn since?

A. No, sir.

Q. 23. Had you sold any of your watermelons before the flood came and carried part of them away?

A. I think not—not to my remembrance.

Q. 24. What was the condition of most of the melons which you caught—were they ripe or not?

A. They were not ripe.

Q. 25. Were any of them ripe?

A. To the best of my remembrance there might have been, may be, three or four of them.

Q. 26. You were growing the melons for sale, were you?

A. Yes, sir.

Cross-examined by Mr. Howson:

Cross-Q. 27. What sort of a bridge was that at Zinn's fulling-mill?

A. It was a foot-bridge.

Cross-Q. 28. Was it above or below your watermelon patch?

A. It was below.

Cross-Q. 29. How far below?

A. That I wouldn't say for certain, but it may be a mile and a half, and may be not quite so far.

Cross-Q. 30. Where were you going when you tried to cross that bridge?

A. If I mistake not I went to Andy Schell's.

Cross-Q. 31. What was Mr. Schell's business?

A. I most think he used to work at carpentering; I think that was his trade.

Cross-Q. 32. Where did he live and where did he carry on his business at that time?

A. I never knew him to work any place except at housebuilding wherever he was employed; he lived in the neighborhood of a mile down the creek, across the bridge that had been taken away.

Cross-Q. 33. You saw Mr. Schell that day, did you?

A. That I wouldn't say for certain—whether I did or not.

Cross-Q. 34. What was your business that day with Mr. Schell?

A. I can't remember right; but I most think I was after coopers' stuff.

Cross-Q. 35. Well, did you get any coopers' stuff from him at that time?

[*Objected to, as the witness has already testified that he cannot say whether he saw Mr. Schell or not that day.*]

A. I engaged it at that time, but I didn't get it till in the fall, till I commenced to work in the shop.

Cross-Q. 36. Do you mean that you engaged the stuff that day?

A. Yes, sir; that is what I think I went down for.

Cross-Q. 37. To whom did you give the order?

A. That is more than I can tell.

Cross-Q. 38. I understand you to say that you can't recollect whether you saw Mr. Schell that day or not.

A. Yes, sir; I don't recollect.

Cross-Q. 39. Do you recollect whether or not you were at his place that day?

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A. I was at his place.

Cross-Q. 40. How did you get there?

A. I walked there.

Cross Q. 41. How did you cross the stream?

A. I waded.

Cross-Q. 42. Whereabouts?

A. Right at the place where the bridge had left—at the fulling-mill.

Cross-Q. 43. Whom did you see at Mr. Schell's place that day?

A. I can't tell exactly who all; there was a couple of them there—the old woman and one of the daughters, and one of his sons; I seen them all; I think that was all.

Cross-Q. 44. What is the name of the son and of the daughter, and tell me, if you know, where they are now living?

A. I can't tell you where they are living, and I can't tell you the name of the daughter; the name of the son was Abraham.

Cross-Q. 45. What quantity of coopers' stuff did you order at that time?

A. I think it was between four and five hundred, as near as I can recollect.

Stop, I made a little mistake there that I have been studying at all this time; I don't want to say anything false if I can help it; that must be altered. What I was at—in 1872, in the fall, I got four hundred of the same man; and in 1873—the same time I am telling you of here—that time I went down and engaged them, and I throwed them up on account of my moving. It struck my mind that I had got twice of him. Anything so long ago a body must study to make sure work of it.

Cross-Q. 46. Where did you move to from Lisburn?

A. To Conewago township, York county.

Cross-Q. 47. And have been living there ever since, I understand.

A. Yes, sir.

Cross-Q. 48. Who first saw you about giving your testimony in this case, Mr. Sipe, and when?

A. Mr. A. B. Shank, constable of Lower Allen township; and another man was along, but I don't know his name.

Cross-Q. 49. Did you hear the other man's name at the time?

A. I did, but I forget it.

Cross-Q. 50. Was it Mr. Shoop?

A. Yes, sir; I think so. I think I saw him in Mr. Jacobs' office this morning.

Cross-Q. 51. When was it that these gentlemen first saw you on the subject?

A. I cannot recollect exactly, but I think it was after harvest. It was a couple of months ago, anyhow.

Cross-Q. 52. Was that the first time that you had been asked about this flood?

A. Yes, sir; that was the first time.

Cross-Q. 53. Have they, or has either of them, seen you more than once about the matter; and if yes, how often?

A. No, sir; not till yesterday.

Cross-Q. 54. Where did you go to from Mr. Schell's on the occasion in 1873, as to which you have testified?

A. I came right back home to Lisburn.

Cross-Q. 55. The same way you went?

A. No, sir; I came up on the Cumberland side.

Cross-Q. 56. Do you know whether Mr. Schell is living or dead?

A. He is dead—he hung himself

Cross-Q. 57. Is his wife yet living, if you know, and where?

A. That is more than I can tell.

Cross-Q. 58. When was it that you threw up the order for the coopers' stuff?

A. I can't tell exactly how long it was afterwards, but it was between the time I bought them and I moved.

Cross-Q. 59. How far from Zinn's fulling-mill did Mr. Schell then live?

A. About a mile, as near as I can tell.

Re-direct by Mr. Jacobs:

Q. Q. 60. You were subpœnaed yesterday by Constable Shank were you not?

A. Yes, sir; about 11 o'clock.

Q. Q. 61. And arrived here last evening after dark?

A. Yes, sir.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 15th day of November, 1883.

FRED. M. OTT,
Examiner.

His
GEORGE × SIPE.
mark.

Recess from 12 to 2, P. M.

NOVEMBER 15, 1883, 2.45 P. M.

Examination resumed.

Present, same counsel.

Mrs. CATHARINE SIPE, *being produced, sworn, and examined, saith:*

Examined by Mr. Jacobs:

My age is thirty-five; residence in Conewago township, York county, Pa.; I am the wife of George S. Sipe.

Q. 1. When were you married to George S. Sipe?

A. In 1869.

Q. 2. What time in 1869?

A. March the 21st.

Q. 3. Where did you and your husband go to live immediately after your marriage?

A. We moved up to Lisburn?

Q. 4. How long did you live there?

A. Four years and a half.

Q. 5. Is your husband's mother still living?

A. No, sir.

Q. 6. When did she die?

A. In the beginning of May, 1873.

Q. 7. How long after your mother-in-law's death did you continue to live in Lisburn?

A. Till October of the same year.

Q. 8. Do you remember the fact of your husband being engaged in growing watermelons on Kunkel's island in or near Lisburn?

A. Yes.

Q. 9. Where were you living at that time?

A. At the upper end of the town of Lisburn.

Q. 10. Was it before or after your mother-in-law's death?

A. We raised them after her death, but we had engaged the patch before her death in the spring; I don't remember whether we had planted them before her death or not.

Q. 11. Do you remember of any accident that occurred to that watermelon patch?

A. Yes; the water destroyed a good many of them.

Q. 12. How did the water come to destroy a good many of them?

A. Because the creek was high and it went through the patch or else it couldn't have destroyed any.

Q. 13. Did your husband ever grow watermelons on Kunkel's island except during the one season of which you have spoken?

A. No; not while we were living there.

Q. 14. Did he at any other time, to your knowledge?

A. I never heard him say anything; of course he might have; but he never said anything to me if he did—not that I know of.

Q. 15. Was any one in partnership with him in growing watermelons at the time you have spoken of; if so, who?

A. Yes; Mr. Wire.

Q. 16. Was Mr. Wire related to your husband in any way; if so, how?

A. Yes, sir, he was; Wire's woman, she was my husband's step-sister; and Wire and my husband are first cousins, too.

Cross-examination waived.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 15th day of November, 1883.

FRED. M. OTT,
Examiner.

CATHARINE SIPE.

JOHN F. WIRE, *being produced, sworn and examined, saith:*

Examined by Mr. Jacobs:

My age is about thirty-seven; residence, Lisburn, Cumberland county, Pa.; occupation, post-fence-making.

Q 1. Were you ever engaged in growing watermelons in partnership with George S. Sipe? If so, when?

A. In 1873 I was engaged with him.

Q. 2. Are you related to Mr. Sipe by marriage or otherwise?

A. Yes, sir; we are first cousins.

Q. 3. How are you first cousins?

A. By marriage.

Q. 4. How is your wife related to Mr. Sipe?

A. My mother and his mother was sisters. My wife is his step-sister.

Q. 5. Is your wife's mother living or dead?

A. No; she is dead.

Q. 6. When did she die?

A. In 1873, in the spring.

Q. 7. Were you in partnership with George S. Sipe in growing watermelons after or before your mother-in-law died?

A. No, sir; it was before she died.

Q. 8. Do you remember whether any accident happened to the watermelon-patch of yourself and Mr. Sipe?

A. Yes, sir; the water took them away.

Q. 9. When was that?

A. In 1873.

Q. 10. Can you tell about what time in 1873?

A. In August.

Q. 11. Were many or few watermelons taken away at that time by water?

A. As near as I can tell, about five hundred.

Q. 12. How did the water come to take them away?

A. By a flood.

Q. 13. Along what stream was the flood?

A. The Yellowbreeches creek.

Q. 14. Was your wife's mother living or dead at the time of the flood which carried your watermelons away?

A. She was dead.

Q. 15. Where was George S. Sipe living at the time of the flood?

A. In Lisburn, in the same house with me.

Q. 16. Have you lived at Lisburn ever since?

A. Yes, sir.

Q. 17. How long have you been married?

A. Fifteen years this fall.

Q. 18. Did you live in or about Lisburn before you were married?

A. Yes; I lived in and around there altogether eighteen years, from this time back. Before I was married I was hired around there.

Q. 19. You have, I suppose, known of other freshets or high waters along the Yellowbreeches creek during that time, besides the one which carried away your watermelons, have you not?

A. Yes, sir.

Q. 20. Do you remember of any flood, freshet, or high water, during that time, as great as that one?

A. No, sir.

Q. 21. Do you know of any bridges being carried away by the flood which took away your watermelons?

[*Objected to as leading.*]

A. Yes, sir.

Q. 22. Please state what ones.

A. The Andersontown fording and the fulling-mill, as we call it.

Q. 23. Was the Andersontown fording above or below Lisburn?

A. Above.

Q. 24. What kind of a bridge was taken away there?

A. A sawed pine log foot-bridge.

Q. 25. What kind of a bridge was taken away at the fulling-mill?

A. A foot-bridge.

Q. 26. What fulling-mill was that?

A. Frederick Zinn's.

Q. 27. Is that above or below Lisburn?

A. Below.

Q. 28. How do you know it was taken away by that flood?

A. I was there and seen it.

Q. 29. Do you mean when it was taken away, or afterwards?

[*Objected to as leading.*]

A. After it was taken away I seen it.

Q. 30. How long afterwards?

A. The next day.

Q. 31. How did you know it was taken away?

A. I was there, going to go across, and I couldn't get across; then I turned back again.

Q. 32. On which side of the creek did you go down?

A. On the York county side.

Q. 33. Where were you going?

A. Up to Andy Schell's.

Q. 34. Did you go there afterwards; and if so, when, and on which side of the creek?

A. Yes, sir; I went down afterwards, on the Cumberland county side; it was about three or four days afterwards; I can't remember that exactly.

Cross-examined by Mr. Howson:

Cross-Q. 35. Who first saw you about giving your testimony in this case, and when was it?

A. Mr. Shank, this morning.

Cross-Q. 36. Was that the first time that Mr. Shank, or any one else, said anything to you about testifying in this case?

A. Yes, sir.

Cross-Q. 37. And are we to understand that before this morning

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neither Mr. Shank, nor anybody for Mr. Drawbaugh, had spoken to you about this 1873 flood?

A. No, sir; no one had.

Cross-Q. 38. With whom have you, before this morning, had any talk about that 1873 flood?

A. I heard talk about it, of course; but I never knowed what it was for, you know; I never kept no account of it. That is about as near as I can get at it. There was talk there in the store in the evening still. That was before I knowed anything about Drawbaugh.

Cross-Q. 39. When you tried to cross the bridge at the fulling-mill and turned back because you couldn't, were you afoot or in a conveyance?

A. I was afoot.

Cross-Q. 40. I understand that when you afterwards went to Mr. Schell's, you went down on the Cumberland county side and so got there without having to cross the creek; is that it?

A. Yes, sir.

Cross-Q. 41. And this, I understand, you did some three or four days after trying to cross at the fulling-mill, and being forced to turn back because you couldn't?

A. Yes, sir.

Cross-Q. 42. What was your errand at Mr. Schell's?

A. I think I was going to pay a note; I ain't sure of that, though.

Cross-Q. 43. A note which you had given to Mr. Schell?

A. Yes, sir.

Cross-Q. 44. For what amount, and what for?

A. A little over five dollars; I bought meat.

Cross-Q. 45. When was this note given?

A. In 1872.

Cross-Q. 46. Were you in the habit of buying meat from Mr. Schell; and if yes, during what period of time?

A. No, sir.

Cross-Q. 47. Do you recollect whether you paid the note on the occasion or not?

[*Objected to, as the witness has testified that he was not sure that he was going to pay a note, but merely thought so.*]

A. I paid the note, but whether I paid it just at that time or not, that I don't know; I was down, I know.

Cross-Q. 48. Whom do you recollect seeing at Mr. Schell's that day?

A. I think I seen Schell himself.

Cross-Q. 49. How long were you there?

A. Not very long.

Cross-Q. 50. What, if anything else, do you recollect doing at Mr. Schell's that day?

A. Nothing, that I can remember.

Cross-Q. 51. Then, while you recollect seeing Mr. Schell, you don't recollect whether you paid him a note or not that day, nor what, if anything else, you did there, nor whether your errand there was to pay the note or not; is that it?

A. Yes; I think I paid part of the note; that I ain't sure of, neither; I went to give him some money on the note; I guess that is what I was down for.

Cross-Q. 52. How many payments did you make on that note; or in how many payments did you pay it off?

A. I think in two.

Cross-Q. 53. How far was the Andersontown fording, referred to in your testimony, above Lisburn?

A. About three quarters of a mile, I guess.

Cross-Q. 54. And how far from your house?

A. About half a mile.

Cross-Q. 55. I understand that, at that time, you were in the watermelon-patch business; is that correct?

A. Yes, sir.

Cross-Q. 56. And that watermelon-patch was some distance below Lisburn, wasn't it?

A. Right at the lower end of the town.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 15th day of November, 1883.

FRED. M. OTT,
Examiner.

JOHN F. WIRE.

BARBARA ANN WIRE, *being produced, sworn and examined, saith:*

Examined by Mr. Jacobs:

I am the wife of John F. Wire who has just testified; my age is thirty-five years.

Q. 1. When were you married to John F. Wire?

A. 1868, September 6th.

Q. 2. Are you related to George S. Sipe, who has testified in this case? If so, how?

A. Yes, sir; he is a half-brother to me.

Q. 3. Had you the same father?

A. No, sir.

Q. 4. Had you the same mother?

A. Yes, sir.

Q. 5. Is your mother living or dead?

A. No; she is dead.

Q. 6. When did she die?

A. In 1873, in May.

Q. 7. Do you remember the fact of your husband and George S. Sipe being engaged in growing watermelons on Kunkel's island at Lisburn?

A. Yes, sir.

Q. 8. Where was Mr. Sipe then living?

A. In Lisburn with me; in the same house I lived in.

Q. 9. Do you remember of any accident that occurred to their watermelon-patch?

A. Yes, sir.

Q. 10. State what it was.

A. There was a good many watermelons went down.

Q. 11. What took them down?

A. The water—the flood.

Q. 12. Was your mother living or dead at the time of that flood?

A. Dead.

Q. 13. How long had she been dead?

A. She died in May and the flood took place in August of the same year.

Q. 14. Do you know whether many or few watermelons were carried away by that flood?

A. There was a good many.

Q. 15. Were you down to see the creek at that time?

A. Yes, sir.

Q. 16. Have you lived at Lisburn ever since you were married in 1868?

A. Yes, sir.

Q. 17. And I suppose you have known the Yellowbreeches creek in those fifteen years to be high, have you not?

A. Yes, sir.

Q. 18. Have you ever known in that time any flood, high water, or freshet on that creek as high as that in 1873, which took away the watermelons of your husband and George S. Sipe?

A. No, sir.

Q. 19. Do you know whether or not any bridges were carried away by that flood?

[*Objected to as leading.*]

A. Yes, sir.

Q. 20. What bridges?

A. The bridge above Lisburn towards Andersontown and the fulling-mill bridge.

Q. 21. How do you know the bridge above Lisburn towards Andersontown was carried away?

A. I went down to cross it, and it was gone.

Q. 22. How long was that after the flood which carried away the watermelons of your husband and Mr. Sipe?

A. A couple of days.

Cross-examined by Mr. Howson:

Cross-Q. 23. Who last, before this morning, has talked with you about this 1873 flood?

[*Objected to as immaterial and irrelevant.*]

A. Shank and 'Squire Shoop, or whatever his name is.

Cross-Q. 24. When was it that Mr. Shank and Mr. Shoop talked with you on the subject?

[*Same objection.*]

A. In August; the time of the Grangers' picnic of 1883.

Cross-Q. 25. Did you attend the picnic with your husband?

[*Same objection.*]

A. Yes, sir.

Cross-Q. 26. And I suppose you, and your husband, and Mr. Shank, and Mr. Shoop talked together about this 1873 flood.

[*Same objection.*]

A. Yes, sir.

Cross-Q. 27. Were Mr. and Mrs. Sipe at that picnic?

[*Same objection.*]

A. Yes, sir.

Cross-Q. 28. Have Mr. Shank and Mr. Shoop, or has either of them visited you at your home since that picnic?

[*Same objection.*]

A. They were there—both of them—but I was not at home.

Cross-Q. 29. Do you remember when that was—how long ago?

[*Same objection.*]

A. No, sir; I don't know just how long ago.

Cross-Q. 30. Who was it told you that they had been there to see you?

[*Same objection, and objected to as hearsay.*]

A. The family that lives in with me—Joel Fetrow's.

Cross-Q. 31. The bridge towards Andersontown, referred to in your testimony, was a small foot-bridge of logs, was it not?

A. Yes, sir.

Cross-Q. 32. When you went down to cross it, as you have stated, where were you going to?

A. I was going towards Siddonstown.

Cross-Q. 33. Had you friends, or acquaintances, or relations at Siddonstown?

A. Yes, sir.

Cross-Q. 34. You were going to visit some of them?

A. Yes, sir.

Cross-Q. 35. I suppose that, during the years you lived at Lisburn, you were in the habit of going to see those friends of yours at Siddonstown every now and then?

A. Yes, sir.

Cross-Q. 36. Who told you about the fulling-mill bridge being carried away?

A. There was different ones told me. I couldn't just tell all; there was so many.

Cross-Q. 37. You didn't go there to see it yourself, did you?

A. No, sir.

Cross-Q. 38. I suppose that since last August your and you husband have talked over this flood a little.

A. Yes, sir.

[*Complainants' counsel objects to the testimony of this witness, so far as it relates to the fulling-mill bridge, as not evidence.*]

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 15th day of November, 1883.

FRED. M. OTT,
Examiner.

BARBARA ANN WIRE.

Adjourned until November 16, at 10 A. M.

NOVEMBER 16, 1883, 10 A. M.

Examination resumed.

Present, Mr. Storrow and Mr. Howson for complainants, and Mr. Hill and Mr. Jacobs for respondents.

JOHN SPRENKEL, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

My age is sixty-five; residence, Lisburn, Cumberland county, Pa.; occupation formerly, milling. I quit it, though, and now do a little farming and day's labor. I milled for thirty-six years continuously.

Q. 1. Do you live close to the Yellowbreeches creek?

A. Yes, sir; right in the horseshoe bend formed by the creek. It is a perfect bend—comes right around the town.

Q. 2. How long have you lived along the Yellowbreeches creek, and in sight of the creek?

A. I milled twelve years at Lantz's mill, right on the creek; I done a big business there. I have lived on or along the creek since 1851 or 1852—I am not certain which. Had it all the time more or less under my eye when I was out of the house—the creek.

Q. 3. Do you remember a flood on the creek that has sometimes gone by the name of the watermelon flood?

A. Yes, sir.

Q. 4. It appears that you have lived on and in sight of the Yellowbreeches creek for at least thirty-one years; will you tell us in what year there occurred the greatest flood on that creek during the whole thirty-one years?

A. I haven't got the date exactly, but it was the time the Gettysburg fight was; that was in 1863, I think—July 1, 2, and 3, I think, of

1863—the time the fight was. It was in that year some time. I measured those floods at the mill—all three of them. They gave me a great deal of trouble, so that I won't forget them very soon.

Q. 5. How many floods were there on that creek in the year of the Gettysburg fight?

A. I don't remember more than three; there were three in that year—three big floods.

Q. 6. Was any particular name given to any of those floods that occurred in the year of the Gettysburg fight?

[*Objected to as immaterial and irrelevant.*]

A. One we called the pumpkin flood, because so many pumpkins swam down.

Q. 7. What was the greatest flood that has occurred on the Yellowbreeches creek from the time of the pumpkin flood in 1863, down to the present day?

[*Same objection.*]

A. To the best of my knowledge, the one which took the watermelons off.

Q. 8. Do you mean the one that has been called the watermelon flood?

A. Yes, sir; that is the one.

Q. 9. Did you ever hear anything about Daniel Drawbaugh's talking-machine?

[*Objected to as new matter not rebuttal, and also as not inquiring for evidence.*]

A. Yes, sir.

Q. 10. Mention the name of any person that you ever heard speaking of it along about the time when you first heard of it?

[*Same objection.*]

A. Michael Smyser.

Q. 11. Was he a one-armed man?

A. Yes, sir.

Q. 12. Where was Michael Smyser employed when you first heard him mention it?

[*Same objection.*]

A. At the arsenal at Harrisburg.

Cross-examined by Mr. Howson, de bene esse:

Cross-Q. 13. Where is Mr. Smyser living now?

A. Right in town where I live.

Cross-Q. 14. And has been living there how long?

A. I couldn't tell that, but it is a good while.

Cross-Q. 15. He has been living there, has he not, ever since he was working at the arsenal, and also before that time?

A. Yes, sir.

Cross-Q. 16. How far from you has he been living during that time?

A. I couldn't just say, but within hearing, anyhow.

Cross-Q. 17. Who first spoke to you about giving testimony in the case, and when?

A. Mr. Shank, last evening, about eight o'clock.

Cross-Q. 18. Was that the first that Mr. Shank said to you on the subject?

A. Yes, sir—that is, concerning me as a witness in the case—I mean that. I don't know that he spoke to me before, but he might have. I don't remember that.

Cross-Q. 19. You have heard a good deal of talk about the telephone suit within the last two or three years, haven't you?

[*Objected to as immaterial and irrelevant.*]

A. Yes, sir; I did.

Cross-Q. 20. You knew, I suppose, that Mr. Michael Smyser had given testimony in the case?

A. I did not, sir; that is, understand, until I came to this place to-day; I did not previous to this day.

Cross-Q. 21. Who told you to-day?

A. This gentleman that I was with [Mr. Hill.]

Re-direct by Mr. Hill:

Q. Q. 22. You told Mr. Hill this morning that when Michael Smyser was working at the arsenal he used to go back and forth between Lisburn and Harrisburg, and that he then mentioned to you the fact of stopping at Mr. Drawbaugh's shop and seeing his talking-machines, and after you told Mr. Hill that, then Mr. Hill told you that Mr. Smyser had been examined as a witness in this case, and had testified to the same effect; was or was not that the substance of the conversation between you and Mr. Hill this morning?

[*Objected to as leading and incompetent.*]

A. Yes, sir.

Q. Q. 23. Did you, or did you not, know that Mr. Smyser had been examined as a witness until after you had told Mr. Hill that Mr. Smyser, while working at the arsenal, had told you about Mr. Drawbaugh's talking-machines?

[*Same objection.*]

A. No, sir.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 16th day of November, 1883.

FRED. M. OTT,
Examiner.

JOHN SPRENKEL.

JAMES SHAFFER, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

My age is thirty-one; residence, Fairview township, York county, Pa.; occupation, laborer.

Q. 1. Did you ever know anything about a flood that is called the watermelon flood in the Yellowbreeches creek?

A. Yes, sir.

Q. 2. Where were you living and what were you doing at the time of that flood?

A. I was working at John P. Sweeney's.

Q. 3. Where was Mr. Sweeney's place?

A. On the banks of the Yellowbreeches at what is called now Elias Hake's mill.

Q. 4. How far is that above Milltown?

A. I should think it is about a mile by the creek and may be a trifle further by the road.

[*Question and answer objected to by Mr. Storrow because the witness has no adequate means of knowledge.*]

Q. 5. Tell us whether you did or did not see any watermelons come down the creek on that flood.

A. I did, sir.

Q. 6. Tell us whether or not any foot-bridges along the creek were carried away by the flood.

[*Objected to as immaterial and not in rebuttal.*]

A. Yes, sir.

Q. 7. What foot-bridges on the Yellowbreeches were carried away by that flood?

A. Etter & Shanklin's, Zinn's clover-mill, and the forge bridge.

Q. 8. How do you know that the bridge at Etter & Shanklin's mill was carried away by that flood?

A. I passed there several times at which it was my way of going to a neighbor's.

Q. 9. To what neighbor's?

A. Joseph Orris; I don't know how he spells his name.

Q. 10. On which side of the Yellowbreeches did Mr. Orris live?

A. The Cumberland.

Q. 11. Before the bridge was carried away, did you go over the bridge at Etter & Shanklin's mill, in passing to and fro between Mr. Sweeney's and Mr. Orris's?

A. Yes, sir.

Q. 12. After the bridge was carried away, did you still continue to visit Mr. Orris, or not?

A. To the best of my knowledge, not more than twice.

Q. 13. How did you go to and from Mr. Orris's, after the bridge was carried away?

A. By the way of Milltown.

Q. 14. In going and coming by the way of Milltown, where did you cross the Yellowbreeches?

A. At Hake's mill.

Q. 15. Which was the longer of the two ways of going from Sweeney's to Orris's?

A. By the way of Milltown.

Q. 16. How long did you live at Mr. Sweeney's?

A. I worked there between two and three months, as near as I can remember.

Q. 17. In what year was it?

A. 1873.

Q. 18. How did you know that the bridge at Zinn's clover-mill was carried away by that flood?

A. I helped to put it up—hauled the timber.

Q. 19. How did you know that the bridge at the forge was carried away by the flood?

A. It was my general way of crossing to go to Lisburn.

Cross-examined, de bene esse, by Mr. Howson:

Cross-Q. 20. Where and for whom are you working now?

A. Samuel Hoff; he lives near Lisburn forge; he is a farmer.

Cross-Q. 21. How long have you been working for Mr. Hoff?

A. From the spring of 1883.

Cross-Q. 22. Where and for whom did you work after working for Mr. Sweeney?

A. Adam Henry Zinn, in Cumberland county.

Cross-Q. 23. Whereabouts in Cumberland county, and how long did you work there?

A. His farm is right back of the creek at the clover-mill; Zinn's clover-mill is on the farm. I worked there one summer.

Cross-Q. 24. Where did you work next, and how long?

A. The next two years I lived with my parents, along the Lisburn and New Cumberland road. I just worked day's work.

Cross-Q. 25. It is your recollection, is it, that Elias Hake's mill is about a mile above Milltown, by the course of the creek?

A. Yes, sir.

Cross-Q. 26. And a somewhat larger distance by the road?

A. Yes, sir.

Cross-Q. 27. I understand that after the breaking down or carrying away of the Etter & Shanklin bridge, you used to go to Mr. Orris' by way of the road from Elias Hake's mill to Milltown; is that it?

A. Yes, sir.

Cross-Q. 28. How many such journeys to Mr. Orris' did you make?

A. After the breaking down of the bridge, not more than two, to my recollection.

Cross-Q. 29. What were you in the habit of going to Mr. Orris' for?

A. For mere acquaintance sake.

Cross-Q. 30. Down to what time did these friendly visits of yours to Mr. Orris continue?

A. That is more than I can tell.

Cross-Q. 31. When did they begin?

A. I had been—I think he lived there two years, as near as I can tell.

Cross-Q. 32. Who repaired the Etter & Shanklin bridge?

A. That I am unable to say. I don't know.

Cross-Q. 33. When was it that you left Mr. Sweeney's employ?

A. In the fall of 1873.

Cross-Q. 34. How early or late in the fall?

A. As near as I can say, about this time—after the corn was husked.

Cross-Q. 35. When you left, had the Etter & Shanklin bridge been repaired?

A. That is more than I can say.

Cross-Q. 36. By the forge bridge, do you mean the Liberty Forge bridge?

A. Lisburn forge is all I know.

Cross-Q. 37. Is there more than one forge there?

A. No, sir.

Cross-Q. 38. Don't you know the name of that forge?

A. Not more than the Lisburn forge.

Cross-Q. 39. Who repaired that bridge?

A. I am unable to say that.

Cross-Q. 40. When was it repaired?

A. I can't say, sir.

Cross-Q. 41. Do you know whether it was repaired at all?

A. Yes, sir.

Cross-Q. 42. How do you know that, and how do you know what was done to the bridge?

A. It was rebuilt, and I crossed it, in the summer following, several times.

Cross-Q. 43. Rebuilt as a foot-bridge?

A. Yes, sir.

Cross-Q. 44. When did you help repair the clover-mill bridge?

A. I worked for Zinn at it.

Cross-Q. 45. When was that?

A. That was the spring of 1874.

Cross-Q. 46. With whom have you been talking lately about the watermelon flood and the carrying away of the bridges?

A. I haven't had conversation with any person of late about it.

Cross-Q. 47. Are we to understand that nobody at all has talked with you or asked you any question about it until you came here to testify?

A. It appears to me that Mr. Shank had talked something to me of late about it. I can't remember of any person talking to me before.

Cross-Q. 48. You mean Constable Shank of Lower Allen township, don't you?

A. Yes, sir.

Cross-Q. 49. And he talked to you about the watermelon flood some time before you were summoned here to testify; didn't he?

A. It has been a short time ago; I can't just say how long.

Cross-Q. 50. Did he come to see you?

A. No, sir.

Cross-Q. 51. Where was it he spoke to you?

A. About half way between my place and Samuel Hoff's.

Cross-Q. 52. Was anybody with him?

A. Not as I remember at the present time.

Cross-Q. 53. How long have you known Mr. Shank?

A. I have known Mr. Shank ten years to the best of my memory.

Cross-Q. 54. Can't you give us an idea of when it was that you met Mr. Shank, and you and he talked about the watermelon flood and the carrying away of bridges?

A. To the best of my knowledge it may be six weeks ago.

Recess from 1 P. M. to 2.15 P. M.

Examination resumed at 2.15 P. M. Present, same counsel.

Cross-Q. 55. Tell us a little more particularly, the situation of Mr. John P. Sweeney's place, at the time you worked there—in what county and what township, and how far below Lisburn?

A. In York county, Fairview township, and, as near as I can tell, about three miles from Lisburn, this way.

Cross-Q. 56. I understand you to say that you left Mr. Sweeney's some time in or about the month of November.

A. I did, sir.

Cross-Q. 57. And that before you learned or supposed that the Etter & Shanklin bridge was carried away, you were in the habit of visiting a Mr. Orris quite frequently?

A. Yes, sir.

Cross-Q. 58. What is Mr. Orris's full name, and where was his place at that time?

A. Joseph Orris; he lived on the Milltown and New Cumberland road in Cumberland county. That is as near as I can describe it to you.

Cross-Q. 59. Was the property he lived on his own at that time; and if not, whose was it, and whose is it now, if you know?

A. No, sir; it belongs to Joseph Bachman at the present time; but the gentleman who owned then, I am unable to say.

Cross-Q. 60. How far was Mr. Sweeney's place from Hake's mill?

A. Just the breadth of the creek.

Cross-Q. 61. What road were you accustomed to take from Mr. Sweeney's place, to Mr. Orris's, when you went by way of the Etter & Shanklin bridge?

A. A road leading from Ellis Hake's distillery, crossing the creek at Etter & Shanklin's, and coming out here at White Hill—midway between White Hill and Bridgeport.

Cross-Q. 62. Can you give us any idea how many times, or about how many times, you journeyed across that bridge from Mr. Sweeney's to Mr. Orris's place?

A. Indeed, I don't know; it might be three times of a summer.

Cross-Q. 63. Can you give us an idea of how many of those journeys you made in the year of the watermelon flood?

A. No, sir; not positively I couldn't.

Cross-Q. 64. Who told you that the Etter & Shanklin bridge was carried away?

A. I saw it myself.

Cross-Q. 65. Went there for the purpose?

A. No, sir.

Cross-Q. 66. Did you notice that the whole, or pretty much the whole, of the bridge was carried away?

A. To the best of my knowledge, it was swept away; there might have been some of the trestle-work standing, but I can't remember.

Cross-Q. 67. You are quite certain that none of the gangway was left—is that so?

A. To the best of my knowledge, I don't know but what the gangway was all swept away.

Cross-Q. 68. Where were you going to, when you noticed all this?

A. To see my friend, Joseph Orris.

Cross-Q. 69. Did you go there that day?

A. Yes, sir.

Cross-Q. 70. How did you get there?

A. I crossed at Hake's mill, by the way of Milltown.

Cross-Q. 71. Then, if I understand you, on that occasion you journeyed from Mr. Sweeney's place down to the Etter & Shanklin bridge; then back again to Hake's mills; then from there to Milltown, and from Milltown to Mr. Orris' place—is that it?

[*Objected to as mere assumption without any warrant from the previous testimony.*]

A. I can't understand that statement.

Cross-Q. 72. Hake's mill is a considerable distance above the Etter & Shanklin bridge, isn't it?

A. About two miles by the way of water, to the best of my knowledge.

Cross-Q. 73. I also understand that Mr. Sweeney's place was right by Hake's mill; isn't that right?

A. Yes, sir.

Cross-Q. 74. I also understand that on the day when you noticed the Etter & Shanklin bridge to have been carried away, you were on a little friendly visit to Mr. Orris from Mr. Sweeney's place; is that right?

A. The day I noticed it—yes, sir.

Cross-Q. 75. And I understand that when you noticed the Etter & Shanklin bridge was gone, you went up the stream again to Hake's mill, and from there by way of Milltown to Mr. Orris's; is that right?

[*Same objection as to cross-question* 71.]

A. I went up the stream to Hake's mill home from Mr. Orris', by way of Milltown.

Cross-Q. 76. How did you get to Mr. Orris' that day?

A. By the way of Milltown.

Cross-Q. 77. Where did you cross the stream?

A. At Hake's mill.

Cross-Q. 78. How long were you at Mr. Orris's that day, and what did you do there?

A. I was there on a visit; the number of hours I am unable to say.

Cross-Q. 79. Did you return to Mr. Sweeney's place by the same road which you took in going to Mr. Orris'?

A. Yes, sir.

Cross-Q. 80. Are we to understand that you crossed the stream at Hake's mill both in coming and going?

[*Objected to as mere repetition, the witness having already several times testified to that fact.*]

A. Yes, sir.

Cross-Q. 81. Then I repeat question 71. [Question 71 re-read to witness.]

[*The objection to question* 71 *repeated, and defendant's counsel, in order to help complainants' counsel out of their difficulty, suggests that if they will ask the witness which side of the Yellowbreeches he was on when he*

saw that the bridge had been washed away, they may arrive at a clearer and earlier understanding of his testimony.]

A. I will have to answer "No" to that; I can't understand it.

Cross-Q. 82. Do you mean that you can't understand the question?

A. I can't understand the question about going from Sweeney's down to Etter & Shanklin's, and then back from Etter & Shanklin's to Hake's mill. I went from Sweeney's to Orris', and then back from Orris' to Sweeney's. I don't understand about going from Etter & Shanklin's to Hake's mill a couple of times.

Cross-Q. 83. Who told you that the Etter & Shanklin bridge was carried away, and when were you told?

A. I saw it myself, sir.

Cross-Q. 84. That was your first knowledge of it, was it?

A. No, sir; I had heard of it before I seen it—by whom, I don't remember.

Cross-Q. 85. Please exercise your memory a little and tell us who it was informed you of that bridge having been carried away.

[*Objected to as an unreasonable request, in view of the answer just given by the witness, as well as in view of the lapse of ten years since the event.*]

A. I can't remember the name.

Cross-Q. 86. How long was it that you had this information, before you went down there to see for yourself?

A. I am unable to say.

Cross-Q. 87. How long after the flood was it, that you noticed for yourself that the bridge had been carried away?

A. I can't remember, sir, the length of time that passed.

Cross-Q. 88. I understand you to say that you helped haul logs for the repair of the Zinn clover-mill bridge in the spring of 1874; what month was it, if you remember—March, April, or May?

A. I should say it was some time along from the middle of May to the beginning of June; it was in corn-plowing time when it was rebuilt.

Cross-Q. 89. Who else, if you recollect, helped at the job, and who bossed the job?

A. The bridge was rebuilt that time by boss David Smith; John Greenfield was one of the laborers; the rest I am unable to state.

Cross-Q. 90. Was the job that of entirely rebuilding the bridge, or simply repairing it?

A. It was the hauling of the old ruins of the bridge together and putting it up—call it what you please.

Cross-Q. 91. Was the Mr. Zinn for whom you worked at that time the owner of the clover-mill then?

[*Objected to as incompetent, and calling for secondary evidence.*]

A. His father was.

Cross-Q. 92. How long after the flood was it that you noticed that the Lisburn forge bridge had been carried away?

A. That length of time I am unable to say.

Cross-Q. 93. Can you give us any idea of the time when you noticed that the bridge had been repaired?

A. It was passable in 1874; the time I don't remember.

Cross-Q. 94. Have you no idea whether it was early in that year or late in that year?

A. No, sir.

Cross-Q. 95. Was it the nearest way from Mr. Sweeney's place to your father's house to cross the stream at the Lisburn forge bridge?

A. My father lived midway between the two places.

Cross-Q. 96. Just when was it that you went to work for Adam Henry Zinn?

A. In the spring of 1874; I can't tell what time in the spring.

Cross-Q. 97. What were you doing between the time you left Mr. Sweeney, and the time you went to work for Mr. Zinn?

A. I was living with my father, working day's work when I had it.

Cross-Q. 98. Is Mr. Joseph Orris still living, and where is he living, if you know?

A. He is still living—name of the township I am unable to state—Dover, I think, in York county.

Cross-Q. 99. How often had you occasion to go to Lisburn while you were working for Mr. Sweeney?

A. I am unable to say, sir.

Cross-Q. 100. Tell us any errand that you recollect having at Lisburn while you were working for Mr. Sweeney.

A. I can't remember, sir.

Cross-Q. 101. How far from Lisburn do your parents live?

A. About three miles this way, sir.

Cross-Q. 102. How often, between the time you quit working for Mr. Sweeney and the time you commenced working for Mr. Zinn, had you occasion to go to Lisburn?

A. I am unable to say, sir.

Cross-Q. 103. Tell us any particular errand that you recollect having at Lisburn during that time.

A. I can't, sir.

Re-direct by Mr. Hill:

Q. Q. 104. When you went to work for Mr. Sweeney, in the summer of 1873, what was the first work that you did for him, so far as you remember?

[*Objected to as not re-examination, and also as assuming.*]

A. Making hay.

Q. Q. 105. At Etter & Shanklin's mill, the Yellowbreeches separates Cumberland county from York county; which county were you in when you looked and saw that the bridge there was washed away?

A. Cumberland.

Q. Q. 106. You have referred to the bridge at Zinn's clover-mill being washed away by the same flood that carried away the bridge at Etter & Shanklin's, to wit: the watermelon flood; did you see the flood wash away the bridge at Zinn's clover-mill?

[*Objected to as not re-examination, and also as leading.*]

A. No, sir.

Q. Q. 107. Do you remember when was the first time that you were at Zinn's clover-mill after the watermelon flood?

[*Objected to as not re-direct.*]

A. No, sir.

Q. Q. 108. Do you remember whether you were there that fall or winter, or whether it was not till spring?

[*Same objection, and also objected to as incompetent in view of the last answer.*]

A. I was there during the fall and winter; the date I don't remember

Q. Q. 109. Do you mean the fall and winter immediately following the watermelon flood?

[*Same objection, and also objected to as leading.*]

A. Yes, sir.

Q. Q. 110. When you were there that fall, was the bridge standing or gone?

[*Same objection.*]

A. Lying along the creek, torn up.

Re-cross, de bene esse, by Mr. Howson :

Re-cross-Q. 111. How often were you at Zinn's clover-mill that fall and winter, and what was your business there?

A. I am unable to say.

Re-cross-Q. 112. Whom did you go there with, and whom did you meet there?

A. I am unable to say.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 16th day of November, 1883.

FRED. M. OTT,
Examiner.

JAMES SHAFFER.

MRS. ELLEN SHAFFER, *being produced, sworn, and examined, saith :*

Examined by Mr. Hill:

I am the wife of Samuel Shaffer; I reside near Shaffnertown, York county, Pa.

Q. 1. What was your father's name?

A. Andrew Schell.

Q. 2. Where did your father live?

A. In Cumberland county.

Q. 3. How far did he live from Zinn's clover-mill?

A. Half a mile, as near as I can state.

Q. 4. When were you married?

A. In 1870—the 15th of May.

Q. 5. Where did you live during the first year of your marriage?

A. I was at my father's.

Q. 6. Where did you live during the year 1871?

A. In Henry Attick's tenant house, near the forge.

Q. 7. Where did you live during the year 1872?

A. In John Hamilton's house.

Q. 8. Where did you live during the year 1873?

A. In my uncle John Fetrow's house.

Q. 9. About what time did you move into your uncle John Fetrow's House?

A. I think it was on the 4th of April, 1873; I am not certain about the day, but know it was the first week of April, 1873.

Q. 10. How long did you live in your uncle John Fetrow's house?

A. Two years.

Q. 11. Did you ever hear of a flood in the Yellowbreeches known as the watermelon flood?

A. Yes, sir.

Q. 12. Do you remember in what year that flood took place?

A. In 1873.

Q. 13. What bridges, if any, were washed away by that flood?

A. At the fulling-mill, at the clover-mill, and at Teahl's, now called Etter & Shanklin's.

Q. 14. In what house were you living when that flood took place?

A. Uncle John Fetrow's.

Q. 15. Where were your parents living in 1873?

A. They lived near the clover-mill, in the same place I referred to before.

Q. 16. Where was your uncle John's house in which you then lived?

A. Close to where I live now—close to Shaffnertown, on the York county side of the Yellowbreeches.

Q. 17. How far was the house which you call your uncle John Fetrow's house from the house your parents lived in?

A. About two miles, as near as I can tell.

Q. 18. And they were on opposite sides of the Yellowbreeches, if I understand you?

A. Yes, sir.

Q. 19. While you lived in your uncle John Fetrow's house, were you in the habit of occasionally visiting your parents or not?

A. Yes, sir.

Q. 20. When going from your uncle John Fetrow's house to your parents' house, before the watermelon flood, where and how did you cross the Yellowbreeches?

A. By the clover-mill foot-bridge.

Q. 21. How long was it after the watermelon flood that you had occasion to visit your parents' house?

A. Indeed I don't know; I went over about every two weeks still—a week or so, as near as I can tell.

Q. 22. Do you mean that you went to your parents' house within a week or two after the flood?

A. Yes, sir; as near as I can tell.

Q. 23. How did you get across the Yellowbreeches on that occasion?

A. My father took me across in a boat.

Q. 24. At what point did he take you across?

A. Over fornenst his house.

Q. 25. How far was that below the clover-mill bridge?

A. Half a mile, as near as I can tell you.

Q. 26. Why did you go down there and be set across in a boat, instead of crossing the bridge at the clover-mill, as usual?

A. The bridge was gone; the bridge was away.

Q. 27. Have you any idea how long that clover-mill bridge was away before it was put up again?

A. No, sir; I can't mind that.

Q. 28. Have you any idea how many times you were set across the Yellowbreeches in a boat?

A. No, sir.

Q. 29. When the bridge was rebuilt, how did you cross the Yellowbreeches in going to your father's place after that?

A. I crossed over the bridge then.

Cross-Q. 30. Then, if I understand you correctly, you crossed over in a boat only during the time that the bridge was gone; am I right?

[*Objected to as leading.*]

A. Yes, sir.

Q. 31. You say that the bridge at Etter & Shanklin's was carried away by the flood; did you know that fact of your own knowledge, or only by common report in the neighborhood where you lived?

A. Just by report.

Q. 32. You mentioned the bridge at the fulling-mill as one that was carried away by the flood at that time; did you know that fact of your own knowledge, or only by common report in the neighborhood at the time?

[*Objected to as leading.*]

A. Do you mean the bridge at the factory? I passed there and that, at the time.

Q. 33. Then you knew of your own knowledge that that bridge was carried away?

A. Yes, sir.

Q. 34. About how far was that bridge from the clover-mill bridge?

A. A mile I think.

Q. 35. In what year did you hear the people talking about the bridge at Etter & Shanklin's having been carried away by the watermelon flood?

[*Objected to as calling for hearsay.*]

A. In 1873.

[*The foregoing deposition objected to so far as it relates to the Etter & Shanklin bridge as not evidence, and the entire deposition objected to as not in rebuttal.*]

Cross-examined, de bene esse, by Mr. Howson:

Cross-Q. 36. When did you arrive in town here to give your deposition?

A. This forenoon.

Cross-Q. 37. Whom have you seen and had any talk with during the day about the flood and the bridges?

A. Not any person.

Cross-Q. 38. Where were you waiting before coming up here to testify?

A. At Crone's.

Cross-Q. 39. Whereabouts is Crone's?

A. I can't tell you that; it is down here; I can't tell you in what street.

Cross-Q. 40. An hotel, is it?

A. Yes, sir.

Cross-Q. 41. You didn't meet or talk with any one there, then?

A. No, sir.

Cross-Q. 42. Who, if any one, came to town with you from your home?

A. Shank.

Cross-Q. 43. And neither you nor Shank said anything on the journey about the flood or the bridges?

A. Not after we were here.

Cross-Q. 44. Then you did have some little talk while you were coming?

A. Yes, but you asked me, after I was here whether I was talking.

Cross-Q. 45. Was that the first conversation you had with Mr. Shank about the flood and the bridges?

A. Yes, sir.

Cross-Q. 46. Mr. Shank had never visited you before this morning, then, on the subject?

A. No, sir.

Cross-Q. 47. Who, if any one, came into town with you and Mr. Shank this morning?

A. Not anybody.

Cross-Q. 48. Were you at the fulling-mill bridge on the same day that you were at the clover-mill bridge after the flood?

A. No, sir.

Cross-Q. 49. Was it a day before or a day afterwards?

A. I can't tell.

Cross-Q. 50. The fulling-mill bridge was not on or near the road from your home to your father's house, was it?

A. No, sir.

Cross-Q. 51. Where did you move to from your uncle John Fetrow's house?

A. Home to my father's.

Cross-Q. 52. When was that?

A. In 1875.

Cross-Q. 53. What were you doing up to the fulling-mill bridge after the flood?

A. I crossed over to the factory.

Cross-Q. 54. What factory?

A. The fulling-mill.

Cross-Q. 55. I understand that from the time when you moved into your uncle John Fetrow's house until you moved to your father's in 1875, it was your custom to visit your parents every week or two; is that correct?

A. Yes, sir.

Cross-Q. 56. What was your errand at the factory or fulling-mill at the time when you say you noticed that the bridge was gone?

A. I went for stocking-yarn.

Cross-Q. 57. Were you in the habit of going there on that errand?

A. Yes, sir.

Cross-Q. 58. Did you go to the factory that day?

A. Yes, sir.

Cross-Q. 59. On which side of the stream is the factory—the York county or Cumberland county side?

A. Cumberland.

Cross-Q. 60. Then you had to cross the stream to get to the factory that day; is that so?

[*Objected to as mere repetition, the witness having already testified that she went across.*]

A. Yes, sir.

Cross-Q. 61. How did you cross, and where?

A. I drove across—crossed at the factory.

Cross-Q. 62. How much yarn did you get that day?

[*Objected to as immaterial and irrelevant.*]

A. I don't recollect.

Cross-Q. 63. Do you remember whether or not you paid cash for it?

[*Same objection.*]

A. Yes, sir; I did.

Cross-Q. 64. Do you remember of whom you made the purchase?

A. Jacob Kimmel.

Cross-Q. 65. Did you make more than one purchase of yarn from Jacob Kimmel?

A. Not that year I didn't.

Cross-Q. 66. Who, if any one, went to the factory with you on that occasion?

A. Nobody.

Cross-Q. 67. About what month or season of the year was that visit for yarn?

A. In the fall of the year; I can't just mind the date.

Cross-Q. 68. You noticed at that time, did you, that the bridge was entirely gone?

A. Yes, sir.

Cross-Q. 69. Did you notice the same thing about the clover-mill bridge when you went to cross with your father?

A. I didn't go to the bridge; I went across below, next to his house.

Cross-Q. 70. Then, if I understand you, you didn't see for yourself what the condition of the bridge was.

A. Yes, sir; I had seen it.

Cross-Q. 71. Then, repeating the previous question, I will ask you whether you noticed that the clover-mill bridge was altogether gone?

A. Yes, sir.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 16th day of November, 1883.

FRED. M. OTT,
Examiner.

ELLEN SHAFFER.

Adjourned until November 17, at 10 A. M.

November 17, 1883.

Examination resumed at 10 A. M.

Present, Mr. Storrow and Mr. Howson for complainants, and Mr. Hill and Mr. Jacobs for respondents.

GEORGE W. ATTICKS, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

My age is forty-two; residence, Fairview township, York county, Pa.; occupation, farming.

Q. 1. Do you know anything about a flood which once occurred on the Yellowbreeches, which is said to have washed away a good many watermelons, and for that reason to have gotten the name of the watermelon flood?

A. Yes, sir; I recollect about it.

Q. 2. In what year did that flood occur?

A. In 1873.

Q. 3. How do you know it was in 1873?

A. There are different reasons why I know it was in 1873. My particular reason is that I made sale of all my farm stock and moved into a small house owned by Jacob Schell and lived there one year.

Q. 4. Do you mean that you lived in Jacob Schell's house from April, 1873, to April, 1874?

A. Yes, sir.

Q. 5. And did the watermelon flood occur while you lived in that house?

A. Yes, sir.

Q. 6. Whose watermelons went down the creek on that flood?

A. The most particular patch talked of and known by the folks in our neighborhood as having been taken away was a patch owned by Jacob Kunkel and farmed by George Sipe and John Wire.

Q. 7. If you had anything to do with that watermelon business of Sipe and Wire that summer, will you tell us what you did, and how you happened to be called upon to do it, and all about it?

A. I was at Lisburn one day, and it appeared as though Mr. Sipe and Mr. Wire had been pulling green melons; and Mr. Kunkel asked me whether I knew anything about pulling melons. I told him I did. He then took me to the patch to see whether there was ripe melons in the patch. After we examined the patch, I told him not; I told him that there wasn't enough melons in the patch that was ripe enough to make it worth while to begin to pull them. We then set a day on

ahead; I think it was a week. I think this was in the beginning of the week—I know it was—and we set on Friday a week for the purpose of examining the melons again and pulling such as were ripe. I thought they would be ripe by that time; during this time the flood was—between the time when Mr. Kunkel and I examined them and the time we set for examining them again and pulling them.

Q. 8. You say you lived in Jacob Schell's house from April, 1873, to April, 1874; tell us whether you ever lived there at any other time.

A. No, sir; I never did, only that one year.

Q. 9. Will you tell us how far that house was from the Yellowbreeches creek; which side of the creek it was on; and about how far it was from Zinn's clover-mill, Zinn's fulling-mill, and Boyer's forge, and in what direction it was from each—that is, whether up or down stream?

A. About one quarter of a mile from the Yellowbreeches on the York county side; it was about one mile up the stream from Zinn's clover-mill, about one quarter of a mile down the stream from Zinn's fulling-mill, and about one mile down the stream from Boyer's forge.

Q. 10. Do you know whether or not that watermelon flood in 1873 carried away any of the foot-bridges along the Yellowbreeches? If so, what foot-bridges did it carry away?

A. Yes, sir; it did take away foot-bridges; it carried away the clover-mill, the fulling-mill, and the forge foot-bridges, to my own knowledge—my own sight—meaning that I seen them after they were carried away. I didn't see the water carrying them away—I seen the places where they were, rather.

Q. 11. If there was common talk in the community at that time about other foot-bridges also having been carried away, will you tell us what other foot-bridges were reported as having been carried away by the flood?

[*Objected to as calling for hearsay.*]

A. The bridge at Teahl's mill, now Etter & Shanklin's, was carried away at that time, too. My impression is that the Anderson bridge, above Lisburn, was carried away at the same time; that I am not positive of, though.

Q. 12. Tell us what you know about the bridge at Etter & Shanklin's mill having gone away at that time, and tell us any circumstances that were connected with it, and that impressed themselves on your memory.

A. Charles Sweeney was supervisor, that year, of our township, or rather that end of the township which this bridge belonged to. In the fall—I think it was in November—he asked me to help put up this bridge at Etter & Shanklin's.

Q. 13. In what house were you living when Mr. Sweeney sought your services in rebuilding the bridge at Etter & Shanklin's?

A. In the house of Jacob Schell.

Q. 14. From your testimony I should judge that that bridge was a township and not a county bridge?

A. Yes, sir; the township of Fairview, York county, and Lower Allen, Cumberland county, built it.

Q. 15. I judge that these foot-bridges, when they occurred along the creek, were at places where the road crossed the creek by fords; state whether such was or was not the fact.

[*Objected to as leading.*]

A. Yes, sir.

Q. 16. The complainants last winter, at Philadelphia, examined, as a witness in their behalf, Mr. John F. Hursh, of Pawnee county, Kansas, who testified that he was a farmer in Fairview township, York county, Pa., up to November, 1879, when he moved West; that his farm was on the banks of the Yellowbreeches, below Milltown, and that he was formerly interested in the Drawbaugh Pump Company, or Drawbaugh Manufacturing Company, that made the Drawbaugh faucets at Milltown, twelve or fourteen years ago. Do you know Mr. John F. Hursh? If so, how long and how well have you known him?

A. I know him; I suppose I have known him for, say, twenty-five years; I know I have known him that long; we were intimately acquainted; he is married to my sister.

Q. 17. Mr. Hursh testified, among other things, that Mr. Daniel Drawbaugh, about September, 1878, spoke to him about his talking-machine, and showed him some of his talking-machine instruments; and that this was the first time he ever heard that Mr. Drawbaugh had a speaking telephone, [see Complainants' printed record, pages 1,059 and 1,060]. Did you ever have any conversation with Mr. John F. Hursh with regard to Mr. Daniel Drawbaugh's talking-machines? If so, will you state, as near as you can, when it was that you and Mr. Hursh conversed together on the subject?

A. Yes, sir; we did talk about it. To the best of my knowledge it was between 1875 and 1877.

Q. 18. When you and Mr. Hursh so talked about it, did you inform him that Mr. Drawbaugh had a talking-machine, or did he already seem to know the fact and speak to you about it?

[*Objected to as leading.*]

A. I do not know whether I knew of it before him and I talked, but my impression is that I did. I do not know whether I informed him that Mr. Drawbaugh had a talking-machine or whether he seemed to know the fact. I don't know how that was at all. I do know that we talked about it, and talked of going to Drawbaugh's shop to see his talking-machine, and to see his electric clock that he was having at that time.

Cross-examined by Mr. Storrow:

Cross-Q. 19. Whose house do you live in now?

A. Dr. Hursh's.

Cross-Q. 20. Where is it, and how long have you lived in it?

A. In Fairview township; I have lived there since the spring of 1874.

Cross-Q. 21. What road is it on?

A. The road leading from Boyer's forge to New Cumberland.

Cross-Q. 22. How far from New Cumberland, and how far from Boyer's forge?

A. About one mile from New Cumberland, and about four miles from the forge.

Cross-Q. 23. How near to Mr. John F. Hursh's house?

A. Close on to a quarter of a mile—not quite that far.

Cross-Q. 24, (*de bene.*) In your 11th answer, naming the bridges which you think were carried away by the watermelon flood, you first named the bridge at Teahl's mill, now Etter & Shanklin's; was that Teahl's mill, or was Teahl milling there at that time?

A. I do not know that.

Cross-Q. 25, (*de bene.*) How far from Lisburn was the Anderson bridge?

A. About one mile.

Cross-Q. 26, (*de bene.*) At other times besides that flood, did you ever know or hear of any bridge being carried away on the Yellowbreeches?

[*Objected to as new matter not inquired of in the examination-in-chief, and as irrelevant and immaterial.*]

A. Oh, yes, sir; frequently in my life. I have lived there all my

life, and I think that in my life I have heard of twenty bridges being taken away at those five places.

Cross-Q. 27, (*de bene.*) When did you ever know of the Teahl bridge being taken away other than what you have already testified about it?

[*Same objection.*]

A. I cannot state any time; I am not positive that the bridge ever was taken away; however, I think it was; I did not live in that neighborhood.

Cross-Q. 28, (*de bene.*) When did you ever know of the Liberty forge bridge being taken away?

[*Same objection.*]

A. I can't give any dates; I know it was taken away once by ice; I was there and seen it going away: I was on the bridge five minutes before it went. That was between the years 1850 and 1860 somewheres; I was a school-boy then and went to school.

Cross-Q. 29, (*de bene.*) When was the Zinn fulling-mill bridge ever taken away?

[*Same objection.*]

A. The same time mentioned in my last answer; and it was taken away in 1863, the time of the Gettysburg battle.

Cross-Q. 30, (*de bene.*) When was the Zinn clover-mill bridge taken way?

[*Same objection.*]

A. I can't answer that definitely; I know it was away at different times, but what dates I can't give.

Cross-Q. 31, (*de bene.*) When was the Anderson bridge carried away?

[*Same objection.*]

A. That was out of my neighborhood and I can't give dates.

Cross-Q. 32, (*de bene.*) When was the Anderson foot-bridge last carried away?

[*Same objection.*]

A. If it was carried away in 1873, which I believe it was, then that was the last time, for it was never built again; there was a wagon bridge built there in 1873.

Cross-Q. 33, (*de bene.*) Do you mean to have us understand from your deposition that the Etter & Shanklin bridge was carried away by the

watermelon flood, and not put up until the time when you were asked by Mr. Sweeney to help put it up, as stated in your 12th answer?

A. Yes, sir; that was my impression.

Cross-Q. 34, (*de bene.*) Did you help put it up?

A. No, sir.

Cross-Q. 35, (*de bene.*) You were asked in your 6th question whose watermelons went down the creek, and you answered that the most particular patch talked of in your neighborhood was the Sipe and Wire patch; what other watermelon patch did you hear talked of as having been swept by that flood?

A. I can't name any other patch; I do know that when I went to Lisburn they told me that they were not all Sipe and Wire's patch. They must have come from some patch up the creek—out of my neighborhood, I suppose.

Cross-Q. 36, (*de bene.*) How much of a family did you have when you lived in Jacob Shell's house?

[*Objected to as immaterial.*]

A. Myself, wife, and one child—a boy.

Cross-Q. 37, (*de bene.*) How much of a family have you got now?

[*Same objection.*]

A. Two boys.

Cross-Q. 38, (*de bene.*) Have you ever testified before in a law-suit?

[*Same objection.*]

A. Yes, sir.

Cross-Q. 39, (*de bene.*) What suit and when?

[*Same objection.*]

A. I testified once before 'Squire Kirk, at New Market, in a suit between John F. Hursh and Henry Otstal; that was about the year 1863. I was once before the court in Perry county in a suit between Jacob Milley and a man by the name of Ensinger—I forget his first name.

Cross-Q. 40, (*de bene.*) Have you ever yourself been a party in any law-suit or litigation?

[*Same objection.*]

A. No, sir.

Cross-Q. 41, (*de bene.*) Haven't you been a defendant in a legal proceeding within the last five years?

[*Same objection.*]

A. Yes, sir. I have; but the suit was withdrawn before it came to a trial.

Cross-Q. 42, (*de bene.*) Did you settle it by the payment of money?

[*Same objection, and further objected to as new matter, not referred to in the examination-in-chief, and as utterly irrelevant and incompetent for any pnrposes in this suit.*]

A. I don't know that I am obliged to answer that question, and yet, at the same time, I don't care to answer it. It is nothing that I care to answer, at all. It is my character you are after, and all I have to say is to refer you to my neighbors—to the best people of Fairview township. I don't ask you to go into the mountains among rubbish, but among the best people of the township.

Cross-Q. 43, (*de bene.*) What was the nature of those legal proceedings?

[*Same objection.*]

A. Am I obliged to answer that? [Question repeated.] If the mere answering of that has anything to do with it, I am not ashamed to answer it.

[*Same objection.*]

Anything to do with this case is what I meant. [Question repeated.]

[*Objection repeated.*]

The charge was fornication and bastardy.

Cross-Q. 44, (*de bene.*) You paid a substantial sum of money to settle the case, did you not?

[*Same objection.*]

A. I paid the costs of prosecution.

Cross-Q. 45, (*de bene.*) Is that all?

[*Same objection.*]

A. Yes, sir.

Cross-Q. 46. You gave a bond to support the child, did you not?

[*Same objection, and defendants' counsel inquires what that matter has to do with this case, or with the witness' character for truth and veracity.*]

A. Yes, sir.

Re-direct by Mr. Hill, de bene esse:

Witness states: I wish to state, since you have it down so fine, that I took my lawyer's advice. She had nothing but herself, and I had

nothing but myself to go on the witness stand. And my counsel, Mr. Stuart, advised me, if I could settle that way, to settle, and so I settled. And I would say, furthermore, I did not seek that settlement, and have wished a hundred times I had not made it.

Q. Q. 47. Were you guilty or not guilty of the charge?

A. I was not guilty. She confessed to me since that it was not her doings at all that she did what she did do.

Q. Q. 48. I state the fact, as a matter of common observation among attorneys at the bar, that in cases where a woman charges a man with the paternity of a child under the bastardy act, it is, from the nature of the charge itself, always difficult and generally impossible for the man to successfully defend himself and secure an acquittal, even though he be innocent of the offense. When you went to Mr. Stuart to procure his services as your legal adviser in that matter, did he, or did he not, tell you in substance, and as the result of his professional experience and observation, what I have just stated?

A. Yes, sir. Mr. Stuart had been my counsel for some years before, and is my friend as well, and he referred me to a case that he had then on hand, between a young man named Myers and a young lady, who swore to the time, and only time, that he had been with her, and that he had three substantial witnesses proving that Myers was in Baltimore at the time, and for twenty-four hours each way—forty-eight hours in all—from the time she said he was there with her, and the jury returned a verdict of guilty, and that he did not want to drag me through a court trial if he could help it, as a friend of mine.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 17th day of November, 1883.

FRED. M. OTT,
Examiner.

GEORGE W. ATTICKS.

Recess until 2.30 P. M.

GEORGE MARTIN, *being produced, sworn and examined, saith:*

Examined by Mr. Hill:

My age is twenty-eight years; residence, Steelton, Dauphin county; Pa.; occupation, laborer; I work in the Bessemer department.

Q. 1. Mr. Samuel M. Deckman, a farmer of Lower Allen township,

Cumberland county, Pa., was examined as a witness in this case in the early part of the present week, and testified, among other things, that his farm lies along Yellowbreeches creek, about two miles and a half below Boyer's forge; and that he moved on to that farm on the 4th day of March, 1873; and that the farm was deeded to him by Levi Nutman, Frederick Deckman, George Danner, George S. Fink, and others, on the 5th day of April, 1873; do you know that Mr. Samuel M. Deckman?

[*Question objected to so far as it embodies a statement of what Mr. Deckman has testified to.*]

A. Oh, yes, sir; I knew him.

Q. 2. In his answer to question 20, in his deposition, he testified that his son-in-law lived with him in the year 1873; who was this son-in-law?

[*Same objection.*]

A. George Martin.

Q. 3. Do you mean that you are the man yourself?

A. I am.

Q. 4. And did you live with him in the year 1873?

[*Objected to as leading.*]

A. Yes, sir.

Q. 5. Reference has been made by several witnesses in this case to a great flood on the Yellowbreeches at one time, which became known as the watermelon flood; did you know anything about that flood?

[*Same objection.*]

A. Yes, sir.

Q. 6. When did that flood take place?

A. In 1873.

Q. 7. Where were you living at the time when the flood occurred?

A. With Samuel Deckman.

Q. 8. Did you have anything to do with the watermelons that came down in the flood?

A. I gathered a few of them.

Q. 9. How did you gather them?

A. With a boat, going along the creek—sticking in the bushes, I found them.

Q. 10. Did that flood overflow any of the bottom-land of Mr. Deckman, or not?

A. Yes, sir.

Q. 11. Mr. Deckman testified, in answer twenty, that his son-in-law boated around on his bottom-land there, and gathered up the water-melons; what recollection have you about that, if anything?

[*A general objection is here entered to this palpable method of leading the witness by informing him of what some one else has testified to. This objection to apply to all succeeding questions, if any, of the same kind.*

Mr. Hill replies that his questions are so framed as to direct the witness' attention to the point about which he wishes to inquire, and without leading him one way or the other.]

A. I done it; I gathered them up—yes; I boated over his bottom-land; he had five or six acres that was under water—the greater part of it.

Q. 12. Will you tell us whether or not any bridges above Mr. Deckman's place were swept away by that flood?

A. Yes, sir; the way they looked by the timber that came down the creek; bridge timber came down. I remember one tree, with the root and all, that had a bridge-timber sticking on to the root; and there was a lot of bridge-timber lodged down on the dam, down at Miller's mill, and lay there quite a time. If I mistake not I wanted to gather some of of the timber, and Deckman allowed I had better not—that it belonged to the bridges, and that they would come along and gather it up after a while.

[*Answer objected to as not evidence.*]

Q. 13. Do you mean that the tree with the root and all, and with the part of a bridge entangled with it, came down on the flood, and that you saw it coming down? And if you do not mean that, state what you do mean.

[*Objected to as leading.*]

A. Yes, sir; that is what I mean.

Q. 14. Were you ever in Mr. Daniel Drawbaugh's shop in Milltown?

A. No, sir.

Q. 15. Did you ever hear anything said about his talking-machine? If so, will you tell us when you first heard about it, so far as you can remember, and where you were living at that time?

[*Objected to as new matter not in rebuttal, and also as leading and inquiring for hearsay.*]

A. I was living at Barney Staub's when I first heard talk about the talking-machine; it was in 1874.

Q. 16. Did you hear a good many people talking about it at that time, or not?

[*Same objection, and also objected to as leading.*]

A. Yes, sir.

[*The whole deposition objected to as immaterial and not in rebuttal.*]

Cross-examination, de bene esse, by Mr. Howson:

Cross-Q. 17. You are living at Steelton at the present time?

A. Yes, sir.

Cross-Q. 18. How long have you been living and working there?

A. Altogether I have been working there about sixteen years.

Cross-Q. 19. How about the living part of the question?

A. I have been living there all the days of my life but two years I lived across the river.

Cross-Q. 20. When were you married?

A. Twelve years ago this fall.

Cross-Q. 21. How old were you when you were married?

A. Sixteen.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 17th day of November, 1883.

FRED. M. OTT,
Examiner.

GEO. MARTIN.

Adjourned until Monday, November 19, 1883, at 10 A. M.

November 19, 1883, 10 *A. M.*

Examination resumed pursuant to adjournment.

Present, same counsel.

ISAAC GRAY, *being produced, sworn and examined, saith:*

Examined by Mr. Hill:

My age is forty-five; residence, in Cumberland county, Pa., near Lisburn; occupation, farming.

Q. 1. How long have you lived where you now reside?

A. Thirty-two years.

Q. 2. How far do you live from the Yellowbreeches creek?

A. As near as I can tell, about fifty yards.

Q. 3. How far do you live from Zinn's clover-mill, and how far from the fulling-mill?

A. About a half a mile from the clover-mill, and about a quarter of a mile from the fulling-mill.

Q. 4. During the thirty-two years that you have resided at your present place, when was the highest water along the Yellowbreeches creek, to the best of your recollection?

[*Objected to as calling for the witness' guess-work.*]

A. In seventy-three.

Q. 5. Was there much of a rise in the creek at that time?

A. Yes, sir.

Q. 6. At what season of the year was it?

A. In August.

Q. 7. Do you remember of seeing any watermelons floating down the creek at that time?

A. Yes, sir.

Q. 8. Do you remember of any bridges being carried away by that rise in the creek?

A. Yes.

Q. 9. What bridges?

A. Fulling-mill and clover-mill bridges.

Q. 10. Did you have occasion to use those bridges for crossing the creek frequently?

A. Yes, sir.

Q. 11. How did you know that they were carried away at the time you have spoken of?

A. I had some business to go across, and I couldn't get across.

Q. 12. How long was that after the rise in the creek which you have spoken of?

A. Indeed, I can hardly tell you; it might have been a couple of days, as near as I can tell you; I couldn't be certain, though.

Q. 13. Are the clover-mill and fulling-mill bridges above or below Lisburn?

A. Below Lisburn.

Q. 14. And as I understand, you live between them; is that correct?

A. Yes.

[*The whole deposition objected to by Mr. Storrow as not in rebuttal.*]

Cross-examined by Mr. Storrow, de bene esse:

Cross-Q. 15. What road do you live on coming out from Lisburn?

A. We call it the fulling-mill road, going out to Shiremanstown—the one we live on.

Cross-Q. 16. What was the business that you have referred to in your eleventh answer?

A. I wanted to go down to Lewisburg after my machine—to see if my machine was done.

Cross-Q. 17. How far is Lewisburg from your house?

A. I suppose it is about six miles.

Cross-Q. 18. Who was working on your machine, and what kind of a machine was it?

A. A threshing-machine; Samuel Randolph was working on it.

Cross-Q. 19. What was he doing to it?

A. He was fixing the shaker.

Cross-Q. 20. Did you go there that day?

A. No, sir.

Cross-Q. 21. Why not?

A. I couldn't get across the creek.

Cross-Q. 22. Why not?

A. Why, the time I was to go it was too high.

Cross-Q. 23. Did you go to the creek, or did you find out that it was too high and stop before you got there?

A. I went to the creek.

Cross-Q. 24. Was the creek too high for a man to wade across?

A. I didn't go over.

Cross-Q. 25. Do you know how deep it was?

A. No, sir.

Cross-Q. 26. What made you think it was too high to go across?

A. There was too much water in; I knowed it was too high to go across.

Cross-Q. 27. Was the water too swift, or too deep?

A. It was swift and deep, too.

Cross-Q. 28. What kind of a team did you have?

A. I was walking.

Cross-Q. 29. Do you mean to say that you started to walk over to Lewisburg, six miles and six miles back, that day?

A. Yes, sir.

Cross-Q. 30. Were you carrying on a farm then?

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A. Yes.

Cross-Q. 31. Did you own any horses?

A. Yes.

Cross-Q. 32. How many?

A. Four.

Cross-Q. 33. What were your horses doing that day, that you didn't take any of them out?

A. Hauling wood.

Cross-Q. 34. Who was driving them?

A. My son.

Cross-Q. 35. What bridge did you try to cross when you tried to cross it?

A. There was no bridge there to cross when I wanted to cross.

Cross-Q. 37. Was there none of it standing?

A. No.

Cross-Q. 38. Trestles all gone?

A. Yes.

Cross-Q. 39. Where were the timbers, if you know?

A. I suppose they must have went down the creek; I don't know; I didn't see any.

Cross-Q. 40. Was that bridge ever put up again?

A. Yes, sir; it was put up again.

Cross-Q. 41. When?

A. That I don't mind anything about—when the bridge was put up—at all; only that it was put up.

Cross-Q. 42. Was it put up the same year, or another year?

[*Objected to because the witness' memory on that subject has already been exhausted.*]

A. Indeed, that I cannot mind; I can't tell you.

Cross-Q. 43. Who put it up?

A. I can't tell you that.

Cross-Q. 44. How do you know it ever was put up?

A. I see it is up.

Cross-Q. 45. When?

A. Last evening I seen it.

Cross-Q. 46. Did you go down there last evening to look at it?

A. I went down there to go across to go to meeting in York county.

Cross-Q. 47. When did you first know of its being up after the summer of 1873?

A. I cannot tell you that.

Cross-Q. 48. Were you there again in 1873?

A. I was at the creek at that time in 1873.

Cross-Q. 49. Were you at that fulling-mill bridge in 1873 after that time?

A. Yes; I am at the bridge often.

Cross-Q. 50. Was it up the next time you were there?

A. Indeed, that I cannot tell you; I can't exactly mind of that.

Cross-Q. 51. Did you see it down in 1874?

A. I can't tell you that.

Cross-Q. 52. Did you see it up in 1874?

A. That I can't tell you.

Cross-Q. 53. Can you tell whether you saw it up or down in 1875?

A. I cannot.

Cross-Q. 54. Do you remember of its ever being carried away after the time that you have testified about?

A. Not that I mind of.

Cross-Q. 55. Did you go to the clover-mill bridge in the summer of 1873?

A. I did that evening.

Cross-Q. 56. What evening?

A. The time the bridge went; I can't exactly tell you what evening; I didn't take particular account of the day; I can't tell you that.

Cross-Q. 57. The same evening that the bridge went?

A. No; it wasn't the same evening; I can't just exactly tell; it might have been an evening or so after.

Cross-Q. 58. Was the bridge all swept away, or only a part of it taken away?

A. Indeed, I can't mind about that—how that bridge was—whether it was all tore away or not.

Cross-Q. 59. Tell me what you saw, then.

A. I think the bridge was gone, but I don't recollect whether there was anything of the bridge there yet or not; that I can't tell you.

Cross-Q. 60. When was it put up again?

A. I cannot tell you.

Cross-Q. 61. Was it put up right off, or wasn't it put up until next year?

A. I cannot answer that.

Cross-Q. 62. Who put it up?

A. I don't know.

Cross-Q. 63. Has it ever been carried away since?

A. Not that I know of; I don't mind if it has.

Cross-Q. 64. When did you first see it up?

A. I cannot tell.

Cross-Q. 65. Did you see it up in 1874?

A. I don't know; I can't answer that.

Cross-Q. 66. Did you see it up in 1875?

A. I don't know; I don't mind if I did.

Cross-Q. 67. Never been any other floods on the Yellowbreeches since that time?

A. I don't mind.

Cross-Q. 68. Tell me everything you know about those bridges being carried away or rebuilt at any time since 1876.

A. That is all I know about it; I don't know anything more about it.

Cross-Q. 69. Who has been to see you to ask you about these bridges?

A. I don't mind of anybody.

Cross-Q. 70. Did you talk to anybody about these bridges during this past year?

A. I don't know that I have.

Cross-Q. 71. When were you summoned to come down here and testify, and by whom?

A. Saturday—Shank was up.

Cross-Q. 72. And you don't remember that anybody talked to you about the bridges before the summons was served on you?

A. No, I don't remember anybody.

Cross-Q. 73. Did anybody talk to you about the flood before the summons was served on you?

A. No, sir; there wasn't.

Cross-Q. 74. Who was with Shank when he came to summon you last Saturday?

A. His son; I don't know which of the boys it was; I wasn't close to him.

Cross-Q. 75. What time of day was it?

A. It was towards evening; I don't exactly know what time it was.

Cross-Q. 76. How long did Shank stay with you?

A. I don't know that; he might have been there fifteen minutes.

Cross-Q. 77. Did he talk to you about the bridges and flood?

A. No, he didn't.

Re-direct by Mr. Jacobs:

Q. Q. 78. You have said in your 71st answer that you were summoned on Saturday by Shank; is that correct?

[*Objected to.*]

A. Yes.

Q. Q. 79. Before you were summoned by Shank, had you any knowledge or intimation that your testimony about the flood of 1873 and the carrying away of the bridges would be required here?

A. I hadn't.

Re-cross by Mr. Storrow:

Re-cross-Q. 80. When did you come down here to testify?

A. Saturday morning.

Re-redirect by Mr. Jacobs:

Q. Q. Q. 81. If you came down here to testify on Saturday morning, I presume you must have been mistaken when you said in answer to Mr. Storrow that you were summoned by Mr. Shank on Saturday towards evening?

[*Objected to as leading.*]

A. Yes, I was wrong; it was Friday evening.

Re-re-cross by Mr. Storrow:

Re-re-cross-Q. 82. On the redirect examination, Mr. Jacobs asked you whether you were correct in saying that Mr. Shank had summoned you Saturday, and you answered, "Yes;" is it your present recollection that you were still wrong when you answered Mr. Jacobs?

A. I am right when I say on Friday evening, but I was wrong when I said on Saturday.

Re-re-cross-Q. 83. I should judge that your memory is not very good about dates; is that the fact?

A. I made a mistake as well as anybody else.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 19th day of November, 1883.

FRED. M. OTT,
Examiner.

ISAAC GRAY.

Adjourned until November 20, 1883, at 10 A. M.

November 20, 10 A. M.

Examination resumed. Present, same counsel.

JOSHUA GHER, *being produced, affirmed, and examined, saith:*

Examined by Mr. Hill:

My age is sixty; residence, in York county, Pennsylvania, near Lisburn, Cumberland county: occupation, farming at present; I was formerly a blacksmith.

Q. 1. Did you formerly practice your occupation of blacksmithing at the village of Lisburn, Cumberland county?

A. Yes, sir.

Q. 2. From what time to what time did you practice blacksmithing there?

A. I carried it on on my own account there from 1859 to 1874, but I had done blacksmithing there before that. I learned my trade there.

Q. 3. At what time in the year 1874 did you give up the business of blacksmithing there?

A. On the 1st of April. I didn't just quit exactly at that time, if that is material. A man came there and took the shop on the 1st of April, and I worked about a couple of weeks on his time at his request.

Q. 4. Where was the blacksmith shop situated that you occupied at Lisburn from 1859 to the spring of 1874?

A. You might say it was situated between the red bridge and the shingle factory. It was near Jacob Kunkel's saw-mill—about twenty-five yards from it—and was on bottom land belonging to Jacob Kunkel.

Q. 5. How near to the Yellowbreeches creek was that blacksmith shop?

A. About twenty or twenty-five yards.

Q. 6. How high was the bed of floor of the blacksmith shop above the ordinary level of the water in the Yellowbreeches?

A. That is a pretty hard thing to get at; I suppose it was between three and four feet.

[*Answer objected to by Mr. Howson as not evidence.*]

Witness continues: But now there is another condition there that you are not aware of. The race runs above the shop—is higher than the shop. There was a trunk there that I fed from. The shop was overflowed as much from the race as from the creek sometimes.

Q. 7. You speak of the shop being overflowed from the race and from the creek; do you mean that floods or freshets in the creek sometimes overflowed the blacksmith-shop.

A. The floods—what we called floods—overflowed the shop; that is, the bottom part, not the whole shop.

Q. 8. It has appeared in evidence here that at one time George Sipe and John Wire raised some watermelons on Mr. Kunkel's island just above his mills, and that a portion of their watermelons were carried away by a flood in the Yellowbreeches; tell us what, if anything, you remember about that.

[*Objected to as a leading and improper mode of inquiry.*]

A. According to my book and memory, it was in August 14th, 1874—1873, I meant to say; my book will show it.

Q. 9. If you have your book here, will you please produce it and point out to the examiner the entries by which you fix the date?

A. I have it here; these are the entries.

"Page 212 Account 1873. Cash.

* * * * * * * * * *

* * * * * * * * * *

Aug	2,	900 3 Aug to [blurred] County	1 50
	9	1310	2 10
	13	900 sick [blot] month	40
Sep	12	1975 [blot] Sep 12, raised potatoes	5 75
	20	1080 12 to 20 first frosts Sep	2 30
	27	900 picked Apples Oct 12	75
Oct	4	965	1 25".

Q. 10. In whose handwriting are these entries in this book?

A. My own.

Q. 11. When were these entries made in the book?

A. On Saturday evening and Sunday following the week's work, generally.

Q. 12. I observe in the book that the entries immediately before those which have been copied on to the record seem to occur regularly a week apart, as a general rule; the dates of the entries for the preceding two months being as follows: June 7, 14, 21, 28, July 5, 12, 19, 26, and that the entries in October of the same year are dated as follows: Oct. 4, 11, 18, 25; am I to understand that these entries were dated a week apart, as the result of your habit of writing up your book on Saturday evening or Sunday after the week's work was done?

A. I first had them as a blotter—the charges for the day—and I copied them into the book; I summed them up at the end of the week.

[*All testimony based upon this book is objected to by Mr. Howson, as it appears that the book is not one of original entry.*

Mr. Hill replies that the objection is untenable, because the book is not introduced to prove an account, but simply to enable the witness to refresh his memory, and fix a date by means of a written memorandum made at the time of the date, and that it is utterly immaterial for such purpose whether the memorandum which is produced was an original entry or not, so long as it is established that it was written down in the book by the witness at the time when the transactions to which it refers took place.]

Q. 13. Your usual order of making the entries, from week to week, seems to have been departed from in August and September, 1873; I observe that your first entry in that period is dated August 2; your next entry is a week later, to wit: August 9th; your next entry is only four days later, to wit: August 13th, and opposite that entry you have written the words "sick" "month," and then the next entry after this is dated September 12; will you explain to us what this means, and why you did not make your entries from week to week along in August and the early part of September, 1873, and why you wrote the words "sick" "month" on the same line with the entry August 13th?

A. The book explains partly for itself (sick month) why I done no work, of course, in that month; that was my month of sickness.

Q. 14. Do you recollect clearly of your having been sick at that time?

A. I took sick on the evening of the flood.

Q. 15. Tell us whether or not you were very ill during that period, and what the character of your illness was.

A. Severely sick from the start; the doctor called it the bloody-flux.

Q. 16. Was the water in the creek up high before you were obliged to take to your house from that illness, or not till after?

A. Before I took sick the water was high.

Q. 17. Tell us whether that high water did or did not flood your blacksmith-shop.

A. It did.

Q. 18. Did it flood your shop before you came down sick, or not till while you were sick?

A. Before I was sick.

Q. 19. How long before you were taken down sick did the flood compel you to stop working in the shop?

[*Objected to as assuming and leading*]

A. One day before.

Q. 20. Do you remember what time of day you came down sick?

A. I have said in the evening.

Q. 21. Was that day, August 13—the day when you have marked in the book that you were sick—the day when you were taken down sick in the evening?

A. It appears so in the book.

[*Answer objected to by Mr. Howson, because it appears that the witness has no independent memory on the subject, even when aided by the book; and secondly, because the book itself and the entry referred to in the question are not in themselves competent evidence, for reasons heretofore stated.*]

Q. 22. You have stated that you were taken down sick in the evening and that your blacksmith-shop was flooded one day before you were taken down sick. Assuming that you were taken down sick on August 13, 1873, in the evening, then will you tell us what was the last day on which you worked at the blacksmith-shop before the flood stopped your work?

[*Objected to as hypothetical and incompetent.*]

A. The 13th was the last day's work; I don't assume that I was taken down sick on the 13th.

Q. 23. Will you tell us to the best of your knowledge what day of August it was on which you were taken down sick in the evening?

[*Objected to as incompetent in view of the previous answers.*]

A. The 14th I was taken sick.

Q. 24. You made your memorandum in the book about being "sick a month" after your recovery I suppose; did you?

[*Objected to, as the inquiry should be when it was made.*]

A. Yes.

Q. 25. How soon after?

A. I don't know.

Q. 26. Give us your best recollection and belief about it.

[*Objected to as incompetent.*]

A. About as soon as I was well enough to do it.

Q. 27. You stated in answer 8 that the flood that carried away Sipe and Wire's watermelons was in August, 1873, and that your book will show it, and then referred to these entries in your book which have been copied on the record, and testified that the flood took place the day before you were taken down sick. Do you mean us to understand that that was the flood that carried away Sipe and Wire's watermelons or not?

[*Objected to as leading.*]

A. I have said in the evening.

Q. 21. Was that day, August 13—the day when you have marked in the book that you were sick—the day when you were taken down sick in the evening?

A. It appears so in the book.

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[*Objected to as incompetent.*]

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[*Objected to as leading.*]

A. Yes.

Q. 28. Tell us whether you did or did not hear any talk among the people around near where you live about Mr. Daniel Drawbaugh's talking-machine, for talking to a distance over wires; and if you did, tell us as near as you can about how long ago you first began to hear talk about it.

[*Objected to as new matter, not rebuttal, as assuming and leading, and as inquiring for vague and uncertain hearsay, not evidence.*]

A. I did, eight or ten years, perhaps.

[*A general objection is here entered to the whole of the foregoing deposition as immaterial and not rebuttal.*]

Cross-examined by Mr. Howson, de bene esse:

Cross-Q. 29. Who was your doctor during the sickness of which you have testified?

A. Dr. Lemer, in Lisburn.

Cross-Q. 30. When and by whom were you first seen about giving testimony in this case?

A. Mr. Shank, when he summoned me, I believe.

Cross-Q. 31. When was that?

A. Saturday evening last, I believe it was.

Cross-Q. 32. Was that the first time you had been interviewed or questioned about the flood on the Yellowbreeches creek?

A. No; I guess I have been.

Cross-Q. 33. Who before that saw you on the subject, and when?

A. I don't know that I have been interviewed as you understand it by anybody. People talked about the flood in my presence, and I to them, during this suit.

Cross-Q. 34. During about how long a time back has this talking been going on in your hearing?

A. A couple of months, likely.

Cross-Q. 35. For how long a time have you known of this suit?

A. For a year or so.

Cross-Q. 36. Don't you think it may be more than a year?

A. If I had time to study I might study it out; I think it was more than a year.

Cross-Q. 37. I suppose since you first heard about it you have heard it talked of in your neighborhood every now and then; is that so?

A. Yes.

Examination taken, reduced to writing, and by the witness affirmed and subscribed to before me, this 20th day of November, 1883.

FRED. M. OTT,
Examiner.

JOSHUA GHER.

Recess until 2 P. M.

Two, P. M., adjourned for want of witnesses until Nov. 21, at 10, A. M.

NOVEMBER 21, 1883, 10 A. M.

Examination resumed.

Present, same counsel.

HENRY L. HAMME, *being produced, affirmed, and examined, saith:*

Examined by Mr. Hill:

My age is fifty-one; residence, in Hanover, York county, Penna.; occupation, tending bar at the present time at the Mansion House there.

Q. 1. Were you ever in Daniel Drawbaugh's shop, at Eberly's Mills, Cumberland county, Penna., and if so, how many times were you ever there?

A. Once, and only once.

Q. 2. In what year was that, and about what time of year?

A. It was in the Centennial year—1876—and was either in the last of January or beginning of February—somewheres along there, in one of those two months.

Q. 3. How do you fix the time as being in the latter part of January or early part of February, 1876?

A. Just to the best of my knowledge. If I had the books of Mr. Frederick I could fix the time better. I was clerking for Mr. Frederick on the Harrisburg and Potomac road, and in that time that I was clerking for him I was there.

Q. 4. What is that Mr. Frederick's full name?

A. The contractor? Jacob Frederick.

Q. 5. You speak of him as a contractor; what was he doing that winter?

A. He was there back and forward on his work of grading, building bridges, and mason-work, and whatever there was on the railroad.

Q. 6. Were they just building the Harrisburg and Potomac railroad at that time?

A. Yes, sir; that is, at this end.

Q. 7. If understand you correctly, Mr. Jacob Frederick was a contractor for building a portion of that road?

A. Yes, sir.

Q. 8. And you were employed as his clerk at the time?

A. Yes, sir.

Q. 9. Do you remember how long you were employed as his clerk on that work?

A. About a month, as near as I can tell.

Q. 10. While you were employed by him as a clerk at that time, who kept his pay-rolls and time-books?

A. I did.

Q. 11. In your third answer, you state that your visit to Mr. Drawbaugh's shop was in the time that you were clerking for Mr. Frederick, on the Harrisburg and Potomac road; was that winter the only time that you clerked for Mr. Frederick on the Harrisburg and Potomac road, or did you clerk for him at some other time?

A. Yes, sir; that was the only time.

Q. 12. Who, if anybody, accompanied you into Mr. Drawbaugh's shop, when you went there in January or February, 1876?

A. George Frederick and Mr. Fry—I forget his first name. He is the gentleman over in the room there.

Q. 13. How were George Frederick and that Mr. Fry employed that winter, and by whom?

A. Mr. George Frederick was employed by Jake Frederick. He was working on the road. Mr. Fry was working old Gorgas' farm—where we were working, right through a corner of the farm there.

Q. 14. How happened it that you clerked for Mr. Frederick only a month that winter? Why did you not keep on longer at the business?

A. Because I had my ankle-bone cracked in the army, and it swelled up so that I couldn't wear no boot, and I had to quit and go home.

Q. 15. When you and Mr. George Frederick and Mr. Fry were in Mr. Daniel Drawbaugh's shop together that winter, was Mr. Daniel Drawbaugh there in the shop?

A. Yes, sir.

Q. 16. Had you known Mr. Drawbaugh before that time, or not?

A. No, sir.

Q. 17. While you were there in his shop that day, did he, or did he not, show you any machines which he called talking-machines.

[*Objected to as new matter, not in rebuttal. This objection to apply to all succeeding questions upon the same line of inquiry.*]

A. Yes, sir.

Q. 18. Tell us whether he did or did not talk to you through said machines while you were there that day?

A. He did talk through the machines to me.

Q. 19. While he was talking through the machines to you, and you were listening, in what part of the shop was he talking and in what part were you listening?

A. He was in the room to the right-hand side as you go in—a small room. I was in the back part of the shop—the far end from him—in what I would call the big shop. It was partitioned off in three parts at that time—the shop.

Q. 20. While he was talking into the machine in the small room, and you were listening at the machine at the opposite end of the shop, was the door between you closed or open?

A. It was ajar; I couldn't tell whether it was an inch open—or it might be three inches open.

Q. 21. While he was talking through the machine in the small room, and you were listening at the machine at the opposite end of the building, tell us whether you did or did not hear and understand, through the machine, what he was saying?

A. I did understand it very plainly—what he was talking to me.

Q. 22. Tell us how he talked through the machine—whether he whispered, or talked aloud, or sang, or what.

A. He talked in a whisper.

Q. 23. After you had heard him talking through the machine, and understood what he said through it, tell us whether or not you went back to the small room and had any convervation with him about the invention.

[*Objected to as leading.*]

A. I went back in the small room and I said to him "This lays away over the deck of telegraphing," or "This will do away with telegraphing;" I don't mind any more which, but one of them two words I said.

Q. 24. What further was said?

A. I asked him then "How is this thing done?" he said "This is done by electricity."

Q. 25. I now show you a machine, "Exhibit B," and ask you

whether the machine which you listened at that day was this machine, or looked like this machine or not?

[*Objected to as leading.*]

A. I couldn't tell that. I couldn't tell which machine it was; I couldn't distinguish none of them here, that I would swear to that I had in my hand at that time.

[*The machines here on the table, and which the witness refers to in his last answer are "A," "B," "C," "D," "E," "F," "G," "L," "M," "I," and "O."*]

Q. 26. If I understand you correctly in your last answer, you mean that you are not able to say whether the machine which you had in your hand that day was one of the machines now on the table, or not?

[*Objected to as leading.*]

A. I couldn't answer that. The machine might be here on the table and I not know it. I don't know whether I had one of these machines in my hand or not. I don't know. I wouldn't take my oath whether it was one of these or not.

Q. 27. How did you listen at the machine that day; did you take the machine in your hand and hold it up to your ear, or did you bend your head down to a machine lying on a table or bench?

[*Objected to as leading.*]

A. I held it up to my ear.

[*The whole deposition objected to as new matter not in rebuttal.*]

Cross-examined by Mr. Howson, de bene esse:

Cross-Q. 28. Were you in town here yesterday for the purpose of giving testimony in this case?

A. Yes, sir.

Cross-Q. 29. What time yesterday did you come to town?

A. It must have been about two o'clock. I don't know what time the train gets in. I came up from York on that train that gets in somewhere between one and two o'clock, I think. I am informed its time is 2.05.

Cross-Q. 30. You went to the office of Mr. Jacobs, next door to this place, and saw Mr. Hill and Mr. Jacobs, did you not?

A. Yes, sir.

Cross-Q. 31. You were there for some time, were you not? And you and they had a talk about this matter?

A. I wasn't there very long. I just went in and seen Mr. Jacobs, and asked whether they could hear me, and they said they couldn't.

Cross-Q. 32. No testimony was taken in this case yesterday afternoon; do you know the reason?

A. I do not.

[*Mr. Hill states for the information of complainants' counsel that it was owing to the non-appearance of Mr. Jacob Frederick, who had promised to attend yesterday with his time-book and pay-rolls, a portion of which is said to be in this witness' handwriting, and by means of which the defendants' counsel intended to fix, by written evidence, the date of this witness' employment by Mr. Frederick, before putting this witness on the stand; and that as Mr. Frederick has not yet appeared with his books, the defendants were obliged to go on this morning without waiting further for him.*]

Cross-Q. 33. Referring to your visit to Mr. Drawbaugh's shop, regarding which you have testified in chief, please tell us about how long you were in the establishment on that occasion, and all that you remember to have seen or done on the occasion outside of this matter of the talking-machine.

A. I might have been in an hour, as near as I can tell. I might have been an hour, and I might not have been in an hour. He showed me a clock that he was working on to take to the Centennial that fall. He showed me a fire-alarm that he had in that place there, which, at a certain temperature, would ring a bell; I remember that yet. I seen his turning-lathe there, and machinery that he had there to do work with. I was taking a look all over the shop.

Cross-Q. 34. Tell us just whereabouts in his shop, the machine was at which you say you listened.

A. In the far end of the shop.

Cross-Q. 35. Was it open in the shop, or was it covered and closed in, and what did it rest upon?

A. I had it in my hand and held it to my ear, as I stated once before.

Cross-Q. 36. That does not answer my question, which I, therefore, repeat.

[*Respondents' counsel suggests that the meaning of the question is a little obscure, and that complainants' counsel had better modify his question to render its meaning more plain.*

Complainants' counsel objects to uncalled-for interference in the cross-examination, of which this is by no means the first example.

Inasmuch as complainants' counsel declines to adopt the fair and reason

able course suggested, and sees fit to answer it only by an insinuation which is entirely without foundation, the respondents' counsel now objects to a repetition of the question, for the reason that the witness' answer was a full and fair answer, it being obvious that while the witness was holding the machine in his hand to his ear, the machine could not have "rested upon," nor been "covered" by, or "closed in" anything but his hand, and that it must have been "open in the shop," so far as it was not covered by his hand; and that if the question means some other time than when the witness was holding the machine in his hand, it should so state clearly and plainly.]

[*Question repeated.*]

A. I had it in my hand.

Cross-Q. 37. Where did you take it from?

A. I had taken it out of the front shop into the back shop—the back end.

Cross-Q. 38. Then, if I now understand you, you found the machine in what you call the front shop, and you carried it in your hand to the rear end of what you call the back shop; is that the case?

A. Yes, sir; he handed it to me and I went out—just as if I was going out that door there—and went from the front shop to the back shop; and then he talked; the door was ajar—probably from an inch to three inches.

Cross-Q. 39. Then, if I understand you, while you carried the machine at which you listened from the front shop to the rear end of the back shop, Mr. Drawbaugh stayed in the front shop; is that correct?

A. Yes, sir.

Cross-Q. 40. In what story of the shop did all this occur?

A. I suppose it was on the second floor; we went up a flight of stairs on the outside; it wasn't in the basement.

Cross-Q. 41. Were you on any other floor of the shop that day?

A. No, sir.

Cross-Q. 42. Is it your impression that the machine at which you listened was a sort of square box arrangement?

[*Objected to for the reason that not only has no foundation been laid for such a question, but the witness has already testified in substance that he could not remember how the machine looked; and further, that the question does not call for any fact, but for mere guess-work.*]

A. It is like I said before; the machine might be on the table here before me, and I couldn't tell you; therefore, I couldn't swear what it was like.

Re-direct by Mr. Hill:

Q. Q. 43. When you were listening at the machine at the far end of the shop, do you remember whether there were, or were not, wires connected to the machine that you held in your hand?

[*Objected to as not re-examination, as leading, and as peculiarly improper for the reason given by respondents' counsel for his objection to the last cross-question, to wit: the obvious deficiency of the witness' memory on the subject.*]

A. It was either wire or cord; I don't know which, any more; I couldn't tell whether it was a wire or a cord; it might be a wire wrapped with cord.

Q. Q. 44. Who attached the wire or cord to the machine which you held in your hand?

A. I suppose Mr. Drawbaugh.

[*Answer objected to by Mr. Howson as not evidence.*]

Examination taken, reduced to writing, and by the witness affirmed and subscribed to before me, this 21st day of November, 1883.

FRED. M. OTT,
Examiner.

HENRY L. HAMME.

Recess until 2 P. M.

November 21, 1883, 2 *P. M.*

Examination resumed. Present, same counsel.

GEORGE FREDERICK, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

My age is thirty-nine; residence, Shippensburg, Cumberland county; I am a locomotive engineer by occupation.

Q. 1. Mr. Henry L. Hamme, who was examined as a witness to-day, alluded, in his testimony, to a gentleman named Jacob Frederick, who formerly had a contract for the construction of a portion of the Harrisburg & Potomac railroad in Cumberland county; are you acquainted with that Mr. Frederec'k, and is he any relation to you? If so, what?

A. We are brothers.

Q. 2. Did you do any work in the building of the Harrisburg & Potomac railroad?

A. Yes, sir; I worked on the grade there.

Q. 3. On the grade where?

A. On Billy Gorgas' farm.

Q. 4. Who employed you?

A. Jacob Frederick.

Q. 5. About when did you begin to work for him on that railroad, and how long did you continue to work for him?

A. I began about a week before Christmas, 1875, and worked till after harvest, 1876.

Q. 6. Were you ever in Daniel Drawbaugh's shop at Eberly's Mills? If so, how many times were you there?

A. I was only there once.

Q. 7. In what year was that, and about what time of the year?

A. It was in 1876; it was either in January or February; I don't know which.

Q. 8. Did anybody go with you to Mr. Drawbaugh's shop at that time? If so, who?

A. A man by the name of Harry Hamme, and John Fry.

Q. 9. Do you know where Mr. Fry then lived, and what his occupation was?

A. He was a farmer, and he lived on Billy Gorgas' farm, where we were working.

Q. 10. Was his name John Fry or Jonathan Fry?

A. That I don't know.

Q. 11. How was Mr. Hamme employed, and by whom, at the time when he and you and Mr. Fry went down to Mr. Drawbaugh's shop together in January or February, 1876?

A. He was employed by Jake Frederick as a clerk.

Q. 12. Do you remember how long he worked for your brother Jacob as a clerk?

A. In the neighborhood of about four weeks.

Q. 13. When you and Henry L. Hamme and Mr. Fry were in Drawbaugh's shop together that day, was anything said or done about talking-machines there, or not?

[*Objected to as new matter, not rebuttal.*]

A. Yes, sir; there was some talk about a talking-machine there.

Q. 14. Tell us what you remember about it.

[*Objection repeated, and to apply to all succeeding questions upon the same line of inquiry.*]

A. We came in there and looked around, and seen the clock and fire-alarm, and he showed us a machine he called a talking-machine, and I just took a sly glance at it; and he and Mr. Hamme was talking very much about it—seemed interested in it in conversation. I heard Mr. Hamme say it would lay all telegraphing in the shade.

[*So much of the foregoing answer as purports to set out the sayings and doings of Mr. Hamme objected to as not evidence.*]

Q. 15. Mr. Hamme testified here this morning that on that occasion Mr. Drawbaugh talked to him through the talking-machine, Mr. Drawbaugh being at the time in the small room at the end of the shop, near the entrance at the top of the outside stairs, and Mr. Hamme listening at a machine at the farther end of the shop; tell us whether you remember anything about that or not; and if you remember anything, tell us all that you remember about it.

[*Objected to as leading.*]

A. I remember that they were back and forward; but what they were doing, I don't know.

Q. 16. Did you pay much attention to the talking-machine or not?

A. I didn't pay much attention to the talking-machine; I was interrested in the other part of the machinery.

[*The entire deposition objected to as not rebuttal, and cross-examination, de bene esse, by Mr. Howson.*]

Cross-Q. 17. What sort of things do you mean when, in your last answer, you use the words "the other part of the machinery?"

A. The clock and the alarm.

Cross-Q. 18. How long were you and Mr. Hamme there that day?

A. We might have been there three quarters of an hour, or an hour, as near as I can tell.

Cross-Q. 19. Was it just about as you were going, after seeing other things, that your attention was drawn to the talking-machine?

A. He showed the talking machine in a room, and then I went outside of that room and didn't pay no more attention to it.

Cross-Q. 20. How long have you been living at Shippensburg?

A. A little over a year and a half.

Cross-Q. 21. Where was your home at and before the time you were working on the Harrisburg & Potomac road?

A. In Hanover, York county, Pennsylvania.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 21st day of November, 1883.

FRED. M. OTT,
Examiner.

GEORGE FREDERICK.

JONATHAN FRY, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

My age is forty-five; residence, White Hill, Cumberland county, Penna.; occupation, laborer now; I was formerly a farmer; I quit farming last spring a year ago.

Q. 1. Did you ever occupy Mr. William R. Gorgas' farm in Cumberland county?

A. Yes, sir.

Q. 2. When did you begin to occupy Mr. Gorgas' farm, and how long did you occupy that farm?

A. I came there in the spring of 1872, and lived there nine years in succession.

Q. 3. Last winter, at Philadelphia, the complainants examined a witness named Benjamin Kauffman, whose testimony is printed in Complainants' record, pages 939 to 944 inclusive. He testified, among other things, that his age was sixty-eight; residence, McLean county, Ills.; occupation, farming, and that he went to Illinois in February, 1878. He also testified that before that he resided in Lower Allen township, Cumberland county, about a quarter of a mile west of Milltown, some fifteen or twenty yards from a school-house, and that he used to work around among the neighbors there at day's labor, butchering, making roads, quarrying stone, etc. He also testified, in his 23rd and 24th answers, that the first time he ever heard anything about talking-machines was about a year after he was out in Illinois, when Jonathan Fry came out from Pennsylvania, and told him that Daniel Drawbaugh was making talking-machines; do you know Mr. Benjamin Kauffman, and are you the Mr. Jonathan Fry whom he mentions?

A. Yes, sir.

Q. 4. Do you remember any conversation with Mr. Benjamin Kauffman about Mr. Drawbaugh's talking-machines, at the time when you visited Mr. Kauffman in Illinois?

A. I do not remember; he was asking me about the neighbors and how they were getting along. He was asking me questions. He may have asked me about it and may not; I don't remember.

Q. 5. About what time do you, so far as your recollection serves you, remember definitely seeing or knowing about Mr. Daniel Drawbaugh's talking-machines? I mean what is the first time that you can definitely fix?

[*Objected to as new matter, not rebuttal; and further objected to as incompetent in so far as not distinctly limited to inquiry for personal knowledge.*]

A. It was in between Christmas of 1875 and March of 1876—in between that time.

Q. 6. Were you at Mr. Drawbaugh's shop at that time, or not?

[*Objected to as leading.*]

A. I was.

Q. 7. Who, if anybody, was with you when you visited Mr. Drawbaugh's shop at that time?

A. Mr. Henry Hamme and George Frederick.

Q. 8. Will you tell us what took place at Mr. Drawbaugh's shop that day during the time that you and Mr. Hamme and Mr. Frederick were there together?

A. We came there—took a walk around and came to the shop, and there was a good bit of talk about his clock that he was making, and I told them that we were going to see the clock. And while we were in there he got something, and he called it a talking-machine. I didn't pay no attention to it much; I went there to see the clock. I seen him having something he called a talking-machine; I couldn't recognize what it was like—I didn't pay no attention. I was looking at the clock and other machinery he had in. The others were talking to him about it.

Q. 9. Do you know Mr. John C. Comfort, of Cumberland county, who is employed by the Bell Telephone Company to assist their counsel in working up the evidence in this case?

A. Yes, sir.

Q. 10. Did or did not Mr. Comfort ever come to see you to inquire what you knew about Mr. Drawbaugh's talking-machines?

[*Objected to as incompetent and immaterial.*]

A. Yes, sir.

Q. 11. Did he come to your house to see you about it?

[*Same objections.*]

A. I couldn't say; we talked there once in the road in front of the house and talked about it, and he might have been in the house once that we talked about it. He often stopped that way in passing, but this time I remember that he stopped in the road in front of the house and talked about it—asked me.

Q. 12. About when was it, as near as you remember, that Mr. Comfort first talked to you about your knowledge of the talking-machine?

[*Same objection.*]

A. I don't remember right, but I think it was some time last winter, or not later than spring. I don't recollect right. It was not later than the spring.

Q. 13. When you had that conversation with Mr. Comfort, what did you tell him that you knew about Drawbaugh's talking-machine?

[*Same objection.*]

A. I told him that I, and Henry Hamme, and George Frederick had went into the shop to see the clock, and while we were there he got something there and called it a talking-machine; that I didn't know what it looked like—couldn't recognize what it looked like—I didn't pay no attention to it.

Q. 14. What did Mr. Comfort say when you told him that?

[*Same objection.*]

A. He says: "You have told me that before, but," he says, "you told me something else."

Q. 15. Go on and give the whole conversation between you and Mr. Comfort.

[*Same objection.*]

A. I told him I didn't think I did; he said, "You did," and asked me whether I knowed where. I told him I did not know where. Then he said I told him coming across the bridge from Harrisburg from market one morning; he said that I told him that Daniel Drawbaugh had got wire from me off of an old wire middle fence that Mr. Gorgas tore out. I told him I did not; that I didn't sell no wire. He asked me who was getting wire, and I told him I didn't know of anybody getting wire but Bill Stephens. I knowed of him getting wire from Mr. Gorgas; and some he sold at his (Mr. Gorgas') sale; who got it I don't know.

[*The entire deposition objected to as new matter and not in rebuttal.*]

Cross-examination, de bene esse, by Mr. Howson:

Cross-Q. 16. I understand that you lived on the Gorgas farm from the spring of 1872 to the spring of 1881.

A. Yes, sir; I lived there nine years; that would bring it to 1881.

Cross-Q. 17. How far is that Gorgas farm from Mr. Drawbaugh's shop which you speak of visiting in your testimony in-chief?

A. I would suppose it is about three quarters of a mile.

Cross-Q. 18. How long have you been living at White Hill where you now reside?

A. One year last spring.

Cross-Q. 19. Where were you living between the time you left the Gorgas farm and the time when you went to your present home?

A. I lived at Abraham Bowman's farm, in York county, right across the Yellowbreeches from Etter & Shanklin's mill.

Cross-Q. 20. Then the Bowman farm is quite near to Eberly's mills, isn't it?

A. Yes, sir; it is about three quarters of a mile or may be a mile from the buildings of Eberly's mills.

Cross-Q. 21. And your present residence is about how far from Eberly's mills?

A. About a mile.

Cross-Q. 22. You have known about the telephone or talking-machine suit going on for two years or more, haven't you?

A. I wouldn't be able to say that right; I couldn't tell you how long it is; it is a couple of years.

Cross-Q. 23. And you knew, didn't you, that testimony on behalf of Mr. Drawbaugh and those connected with him was being taken here in Harrisburg in 1881 and the winter of 1882?

[*Objected to as immaterial and irrelevant.*]

A. I did; that reminds me now.

Cross-Q. 24. And during that time did not Mr. Drawbaugh, or somebody in his behalf, come to you to see what you knew about his talking-machine?

[*Same objection.*]

A. Yes, sir.

Cross-Q. 25. Was it Mr. Drawbaugh himself or somebody for him; and if the latter, who was it?

[*Same objection.*]

A. It was Mr. Daniel Drawbaugh and Mr. Jacobs and Harry Bowman.

Cross-Q. 26. Where were you living at that time when these gentlemen came to see you?

[*Same objection.*]

A. On Mr. Gorgas' farm.

Cross-Q. 27. Then it was in the year 1880, was it not, that they came to see you in the fall?

[*Same objection.*]

A. It was either in the fall of 1880 or in the beginning of the winter of 1881—some time in there.

Cross-Q. 28. Mr. Harry Bowman is a justice of the peace, isn't he?

[*Same objection.*]

A. Yes, sir.

Cross-Q. 29. Do you remember whether, when these gentlemen visited you, they got you to make an affidavit or to sign any written statement?

[*Same objection.*]

A. I wouldn't be able to say whether I signed anything; I think mostly though I did; I wouldn't say for a certainty.

Cross-Q. 30. Did not Mr. Drawbaugh, or somebody for him, at any time after this see you again about the talking-machine matter; and if yes, when was it, to the best of your recollection?

[*Same objection.*]

A. Dan was talking to me about it once, and was asking me about Hamme—where Hamme was and Frederick; I don't recollect when it was. It was not so long—maybe a year ago, maybe longer; I forget when it was.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 21st day of November, 1883.

FRED. M. OTT,
Examiner.

JONATHAN FRY.

Adjourned until November 22, at 10 A. M.

November 22, 1883, 10 *A. M.*

Examination resumed. Present, same counsel.

GEORGE LEFEVER, *being produced, affirmed, and examined, saith:*

Examined by Mr. Hill:

My age is fifty-nine; residence, Fairview township, York county; occupation, farming.

Q. 1. Tell us in what part of Fairview township you live.

A. I live in what I would call the upper end.

Q. 2. Does your farm lie along the Yellowbreeches creek?

A. It joins the creek.

Q. 3. Is it above or below Zinn's clover-mill?

A. Above.

Q. 4. How far is it from Lisburn?

A. About a mile and a half below Lisburn.

Q. 5. How long have you lived on that farm?

A. I moved on it in the spring of 1865, and lived on it up to 1879.

Q. 6. Where have you lived since you moved away in 1879?

A. I bought a small property right adjoining, and have lived on that.

Q. 7. It has appeared in evidence here that at one time George Sipe and John Wire were raising some watermelons on a patch of land near Kunkel's mills, at Lisburn, and alongside of the Yellowbreeches, and that the creek rose and washed away a portion of their watermelons. Did you hear anything about that at the time when it occurred, or not?

[*Objected to as leading and inquiring for hearsay.*]

A. Yes, sir.

Q. 8. Do you yourself remember that flood which occurred when Sipe and Wire's watermelons were carried away, or not?

A. I couldn't tell which of the floods that it was.

Q. 9. I did not inquire which flood it was, but asked you whether or not you remembered that there was a flood by which their watermelons were carried away.

A. Yes, sir.

Q. 10. Did the farm which you were occupying from 1865 to 1879 contain any bottom land lying along the Yellowbreeches?

A. Yes, sir.

Q. 11. Did you ever have any crops on that bottom land damaged by floods in the Yellowbreeches? If so, what crops, and when?

A. Yes, sir; I had crops in that bottom land. The last crop that

was especially damaged was, to the best of my knowledge, in 1873—which was a corn crop.

Q. 12. Tell us how far along that crop had got in its growth when it was damaged by that flood.

A. It was just earing-time; what I mean by earing—it was just what we might call—it wasn't matured, but was just driving the ear towards perfection.

Q. 13. In what month does the corn crop in your section of the country generally reach the condition which that corn had reached at the time when the flood came?

A. About August.

Q. 14. Tell us whether or not you ever heard anything said around in the community where you live about Mr. Daniel Drawbaugh's talking-machine; and if so, tell us, as near as you can, how long ago you began to hear it talked about, and how much it was talked about in the community.

[*Objected to as not rebuttal, also as leading and inquiring for vague and uncertain hearsay and not for evidence.*]

A. Yes, sir; I couldn't fix any definite time, but it was quite a number of years; I can't tell how much it was talked about in the community.

Q. 15. Was it talked about much or little?

[*Objected to as incompetent, in view of the last answer, and also as not inquiring for evidence.*]

A. I can't tell to what extent.

Q. 16. Can you tell us whether you began to hear it talked about before the flood which damaged your corn in 1873, or not till afterwards?

[*Objected to as leading, and because the witness' memory has already been exhausted, and he has already stated that he cannot fix any definite time.*

A. I cannot tell.

[*The entire deposition objected to as immaterial and not rebuttal, and cross examination declined.*]

Examination taken, reduced to writing, and by the witness affirmed and subscribed to before me, this 22d day of November, 1883.

FRED. M. OTT,
Examiner.

GEORGE LEFEVER.

CHARLES CRONE, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

My age is forty-five; residence, Harrisburg, Dauphin county, Pa.; occupation, hotel-keeper.

Q. 1. Did you at one time live at Shiremanstown, Cumberland county, Pa.; if so, how long?

A. One year.

Q. 2. Have you any paper here which enables you to fix the time when that year began?

A. I have a receipt dated March 23, 1875. That was the year I lived at Shiremanstown.

[*The receipt is produced by the witness and by consent the following copy is put in evidence as "Exhibit Crone Receipt," the original to be produced when called for:*]

"Shiremanstown, Pa, *March* 23rd, 1875.

Received of Charles Crone.
Twenty dollar rent $20.00.
Per Geo. J. Dietrich,
Samuel Shopp, Jr."

Q. 3. Was that rent for the dwelling-house which you moved into at Shiremanstown?

A. Yes, sir.

Q. 4. How did you pay your rent—monthly, quarterly, or annually—for your dwelling-house at Shiremanstown?

A. Quarterly

Q. 5. Did you pay in advance, or not?

A. I paid in advance.

Q. 6. Is this receipt for a quarter's rent in advance?

A. Yes, sir.

Q. 7. Is this receipt for the first, second, third, or fourth quarter of the year you lived at Shiremanstown?

A. For the first quarter.

Q. 8. Then, I judge that you commenced to live at Shiremanstown in the latter part of March, 1875?

A. Yes, sir.

Q. 9. Where did you live last before you moved to Shiremanstown, and how long?

A. At Camp Hill one year.

Q. 10. From the spring of 1874 to the spring of 1875?

A. Yes, sir.

Q. 11. What was your business and where were you employed during the year that you lived at Camp Hill?

A. I was employed at the State Lunatic Asylum at Harrisburg.

Q. 12. While you lived at Camp Hill that year, how often did you go home from your work at the State Lunatic Asylum?

A. Once a week—on Saturday; I generally got home on Saturday evening.

Q. 13. How far is Shiremanstown from Camp Hill?

A. I suppose they call it about three miles—I should think between two and three miles.

Q. 14. While you lived at Camp Hill and used to be at home on Saturday evenings, were you, or were you not, in the habit of visiting the stores there?

A. Yes, sir; I generally went up every evening when I was at home.

Q. 15. When you moved from Shiremanstown in the Spring of 1876 where did you move to?

A. I moved here to Harrisburg.

Q. 16. Have you lived here at Harrisburg ever since?

A. Yes, sir, with the exception of one year; last year I lived over here at Bridgeport, and kept hotel there.

Q. 17. Since you moved away from Camp Hill, have you, or have you not, been about the stores at Camp Hill?

A. No; I haven't been about the stores since I moved away from there.

Q. 18. When you lived at Camp Hill, and used to be about the stores there Saturday evenings, did you use to hear any talk about Daniel Drawbaugh, of Eberly's Mills, or not?

[*Objected to as not rebuttal, as immaterial, and as calling for hearsay.*

A. Yes, sir.

Q. 19. What talk did you hear about him in the stores at Camp Hill while you lived there?

[*Same objection.*]

A. As regards the telephone?

Q. 20. Yes, as regards the telephone.

[*Same objection.*]

A. I heard different parties say that it was a great pity that Mr. Drawbaugh did not have the means to have this telephone patented.

[*Answer objected to by Mr. Howson, as not evidence.*]

Q. 21. Do you remember any particular person whom you heard make a remark of that kind, at that time?

[*Objection continued.*]

A. No one but Captain Moore; him and I had been talking about it; outside of that there was different parties—no one in particular.

Q. 22. Do you mean Captain Moore, the superintendent of the State Orphan School?

A. Yes, sir.

Q. 23. While you lived at Camp Hill, would you say that Mr. Drawbaugh's telephone, or talking-machine, was or was not a matter of common notoriety at Camp Hill?

[*Objected to on grounds formerly stated, and further as incompetent, because asking for inference, and not for fact.*]

A. It appeared to be of great notoriety—general talk; I heard it frequently.

[*Answer objected to by Mr. Howson, as not evidence.*]

Q. 24. Were you ever in Mr. Daniel Drawbaugh's shop, at Eberly's Mills?

A. I never was in. The simple fact was, because I was always employed, and only got home on Saturdays; and, of course, I didn't have any chance of getting there, unless I would go on Sunday, because I wasn't at home during the week.

Q. 25. Did you then know Mr. Drawbaugh; if so, how well?

A. I knew him by sight; I never was personally acquainted with him; I knew him when I saw him.

Q. 26. Then I judge that all your knowledge about his talking-machines at that time was derived from what you heard around the stores and among your neighbors at Camp Hill?

A. Yes, sir.

[*The entire deposition objected to as immaterial, not rebuttal, and not competent evidence for any purpose in this case.*]

Cross-examined, de bene esse, by Mr. Howson:

Cross-Q. 27. What hotel are you keeping, and how long have you been keeping it?

A. The White Hall hotel in Harrisburg, since the first day of April, 1883.

Cross-Q. 28. It is at the White Hall hotel that Daniel Drawbaugh and

Mr. Shank and Mr. Shoop, while on business in this town connected with this suit, have been putting up, is it not?

A. Mr. Shank and Mr. Shoop put up there, but Mr. Drawbaugh only partly puts up there.

Cross-Q. 29. Quite a number of the witnesses, who have been called on Mr. Drawbaugh's side of the case, have put up there, haven't they?

[*Objected to as immaterial.*]

A. Not all, as I am told; there are some of them stopping there and some at the Franklin House; at least I am told so.

Cross-Q. 30. I understand from your testimony that you moved from Camp Hill to Shiremanstown in March, 1875, and lived at Shiremanstown until the spring of 1876; is that correct?

A. Yes, sir.

Cross-Q. 31. When you moved from Shiremanstown to Harrisburg what business were you engaged in in Harrisburg or the neighborhood?

A. I was boss carpenter at the Pennsylvania lunatic asylum.

Cross-Q. 32. Did you leave that business to go into the hotel business at Bridgeport, or did you have some other business in the meantime?

A. I left that business to go into the hotel business at Bridgeport.

Cross-Q. 33. Bridgeport, where you kept hotel last year, is right across the river from Harrisburg, isn't it?

A. Yes, sir.

Cross-Q. 34. So that during the last four or five years you have been living in Harrisburg, or its immediate vicinity?

A. Yes, sir; it will be seven years and a half now.

Cross-Q. 35. When and by whom were you first spoken to about testifying in this case?

A. There was no one in particular spoke to me. Squire Shoop and I had a conversation, and I told him what I had heard; and that was all there was said about it.

Cross-Q. 36. When was that conversation with Squire Shoop, to the best of your recollection?

A. I shouldn't think it was over two months ago—in the neighborhood of two months.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 22d day of November, 1883.

FRED. M. OTT,
Examiner.

CHARLES CRONE.

WILSON C. FOX, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

My age is thirty-nine; residence, Harrisburg, Pa.; occupation, book-keeper, now with Mr. D. C. Burnite, 16 N. Third street, Harrisburg.

Q. 1. What official position, if any, have you held here in the city during the past year?

A. I have been chief of police.

Q. 2. Do you know Daniel Drawbaugh, of Eberly's Mills, Cumberland county?

A. Yes, sir.

Q. 3. Did you ever see any of his talking-machines?

[*Objected to as not in rebuttal.*]

A. Yes, sir.

Q. 4. When and where did you first see them?

[*Same objection.*]

A. To the best of my recollection, about 1867 or 1868, over at Eberly's Mills, at his shop.

Q. 5. What building was he occupying in his shop at that time?

[*Same objection.*]

A. I don't know what they claimed it to be; it was that building down at the head of the dam—the same that he now occupies as a shop.

Q. 6. What business was going on in that building at the time you first saw Mr. Drawbaugh's talking-machine there?

[*Same objection.*]

A. I think patent faucets were being made.

Q. 7. Do you remember the names of any of the parties that were engaged in the faucet business there at the time?

[*Same objection.*]

A. Mr. William R. Gorgas and Mr. Hertzler I remember; and there were others that I can't remember.

Q. 8. Do you remember whether it was about the beginning of their work on faucets, or near the end of it, that you first saw the talking-machines there?

[*Same objection, and further that no foundation has been laid for the question.*]

A. My recollection is that it was the early part of it.

Q. 9. When you saw the talking-machines there at that time, do you remember how you first happened to notice them—whether you first saw them there and inquired about them, or whether somebody showed them to you first and called your attention to them?

[*Objected to as not rebuttal, and also as a leading and improper mode of inquiry.*]

A. My recollection is that in looking over some pictures he had there—of his own drawing and painting—he took me into a room—I don't know whether it was his office or what—in order to show me an additional picture, and there I saw this and asked what it was.

Q. 10. What did he tell you about it?

[*Objection continued.*]

A. At first he evaded the answer; and then he afterwards said it was a new talking-machine he was inventing—perfecting or inventing.

Q. 11. Did he tell you whether or not he had talked through it before that time? If so, what did he say?

[*Objected to as not rebuttal, and also as leading.*]

A. He said he could talk through it.

Q. 12. Did he say anything about how far he could talk through it? If so, what?

[*Objection continued.*]

A. He said that he could talk up to his house; he told me all about what his anticipations were.

Q. 13. What were they?

[*Objection continued.*]

A. He said that when it was perfected there would be no trouble to connect one point with another. I would just say that in this conversation he told me that it was strictly confidential; and I never mentioned it from that day to this. I didn't know that he remembered of me being there.

Q. 14. Do you remember how the talking-machine looked at that time? If so, tell us all you remember about it, the first time you saw it.

[*Objected to as not in rebuttal.*]

A. The only recollection I have is that the place you spoke into was, I judge, about three, three and a half or, possibly, four inches in diam-

eter, and about an inch and a half deep. I can't fix it exactly in my mind. I am unable to say what the attachments were to that speaking-tube; there were some, but I can't give them now.

Q. 15. Do you remember what the body of the instrument looked like that you spoke into?

[*Objected to, the witness' memory having already been exhausted.*]

A. In the rear of the speaking-tube, that I mentioned, do you mean?

Q. 16. Well, I mean any part of it; I want your entire memory on the subject.

[*Objected to, the witness having already given what he has stated to be his entire memory on the subject.*]

A. I can't explain it at greater length now.

Q. 17. Do you remember whether his talking-machine, at that time, which you saw at his shop, had a glass tumbler or porcelain teacup connected with any portion of it or not?

[*Same objections, and also as leading.*]

A. I am not able to say, sir; I haven't thought of the interview from that day to this.

Q. 18. In the conversation at that interview when you first saw the talking-machine, did he tell you whether it was to operate by electricity or not?

[*Objected to as leading.*]

A. He did say so; I afterwards furnished material to wrap his wire with.

Q. 19. When was it that you furnished material for him to wrap his wire with?

A. My recollection is that it was the winter of 1869 or the spring of 1870.

Q. 20. Where were you employed at the time when he came to you for material to wrap his wire?

A. At the Harrisburg cotton-mill.

Q. 21. In what department of the Harrisburg cotton-mill were you employed when Mr. Drawbaugh first came to you for material to wrap his wire?

A. In the carding-room.

Q. 22. In what years were you employed in the carding-room of the Harrisburg cotton-mill?

A. At this time I went there in the spring of 1870; I had been there the year before, but had been off some time—no, I want to correct that. I went there in the spring of 1869 and stayed there till the spring of 1870. I was then again employed in the spring of 1872, and left in August, 1883; I was employed as book-keeper during that time.

Q. 23. When were you last employed in the carding-room of that mill?

A. I was there three times; the last time was in March, 1871.

Q. 24. What were you doing from March, 1871, to the spring of 1872 when you became book-keeper?

A. I was book-keeper for the Harrisburg stove-works on Allison's Hill; they closed their works and I went to the cotton-mill.

Q. 25. If I understand you correctly, you were employed as book-keeper at the cotton-mill from the spring of 1872 until August, 1883?

A. Yes, sir; till August, 1883, under the old company and under the new.

Q. 26. You state that while you were employed in the carding-room of the Harrisburg cotton-mill, Mr. Drawbaugh came to you for material to wrap his wire with; did he tell you at the time what he was going to do with the wrapped wire? If so, what?

A. He said he thought the yarn would be a better conductor than the material he had been using—I don't know what that was—he could wrap it tighter.

Q. 27. That does not quite answer my question; I inquired if he told you what he was going to do with the wire after he got it wrapped.

A. Oh, yes; I understood what he was going to do with the wire after he got it wrapped—what the wire was intended for—for the telephone or speaking instrument he had.

Q. 28. Have you much knowledge on the subject of electricity?

A. No, sir.

Q. 29. I call your attention to your 26th answer, in which you state that Mr. Drawbaugh said the material he got from you would make a better conductor than the material he had been using before; and I ask you whether the word which he used was "conductor" or "non-conductor?"

[*Objected to as a leading and improper attempt to induce the witness to modify his evidence already given.*]

A. I should say it was "non-conductor," because the word I used was intended to convey the same meaning that the prefix of "non" does.

[*The entire deposition objected to as not in rebuttal.*]

Cross-examined, de bene esse, by Mr. Howson:

Cross-Q. 30. How long have you had your residence in Harrisburg?

A. Since 1867, but not continuously; I have been living here and had my family here since the spring of 1870; I was employed here ever since the spring of 1867.

Cross-Q. 31. How long have you been a married man?

A. Fifteen years.

Cross-Q. 32. When you lived with your parents you lived in Cumberland county—is that the fact?

A. When I lived with my parents I lived in Harrisburg; my wife's folks lived in Cumberland county, near where Mr. Drawbaugh lived.

Cross-Q. 33. What are the names of your wife's relatives to whom you allude?

A. Eichelberger.

Cross-Q. 34. Have you any other relatives living in Cumberland county?

A. Yes, sir; I have a sister living at Eberly's Mills; I was born and raised in Cumberland county up to the time I went to the army—up to the time I was seventeen.

Cross-Q. 35. Please name the sister referred to in your last answer, and say how long she has been living at Eberly's Mills.

A. Mrs. Martha E. Hart; she has been living there ten years or more—I wouldn't swear to that either; I don't know how long she has been living there—ever since she was married.

Cross-Q. 36. What is Mr. Hart's first name?

A. Calvin.

Cross-Q. 37. Commonly known as Cal Hart?

A. Yes, sir.

Cross-Q. 38. And what, if you know, is his father's name?

[*Objected to as immaterial and irrelevant.*]

A. I don't know.

Cross-Q. 39. Do you know where he lives?

[*Same objection.*]

A. Who?

Cross-Q. 40. The father of Mr. Cal Hart.

[*Same objection.*]

A. He is dead.

Cross-Q. 41. When, if you know, did he die?

[*Same objection.*]

A. This last summer.

Cross-Q. 42. About what time in the summer, and where was he living at the time of his death?

[*Same objection, and respondents' counsel protests against a waste of time on this trivial and irrelevant line of cross-examination.*

Complainants' counsel replies that as to the matter of relevancy that, of course, is matter of opinion, but as to the counsel's allegation regarding waste of time, reference to the preceding record in this case, and especially to that part of it which sets forth the proceedings of the present week, will show with how much propriety defendants' counsel can indulge in charges of that kind.

Respondents' counsel replies that he does not propose to bandy words about the proceedings which have heretofore taken place in this case, but he does object to entering into a genealogical investigation with regard to the ancestry of the Hart family, which is obviously a mere waste of time, having nothing to do with this case, nor with the examination-in-chief of the witness.]

A. Living at the homestead all his life that I know of; I don't know the month he died.

Cross-Q. 43. Please tell us just where the homestead is to which you have referred in your last answer.

[*Same objection.*]

A. Eberly's Mills is the post-office address. The house is about three hundred yards north of the post-office.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 22d day of November, 1883.

FRED. M. OTT,
Examiner.

WILSON C. FOX.

J. M. MILLER, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

My age is forty-eight; residence, Harrisburg, Pa.; I have charge of the business office of the Harrisburg Publishing Company.

Q. 1. Does that company publish the Harrisburg daily *Telegraph*?

A. Yes, sir.

Q. 2. Have you here present the file of the Harrisburg daily *Telegraph* for 1873?

A. Yes, sir.

[*Respondents' counsel requests the examiner to copy on to the record at this point the articles published in the Harrisburg daily Telegraph of August 13th, 14th, 15th, 16th, and 18th, 1873, relating to the then recent storms and floods in Pennsylvania and vicinity.*

Newspaper articles objected to as immaterial and not in rebuttal, and because they are not evidence of anything contained therein.]

Cross-examination waived by complainants' counsel.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 22d day of November, 1883.

FRED. M. OTT,
Examiner.

J. M. MILLER.

Adjourned until November 23, 1883, at 10 A. M.

[*The articles are as follows:*]

"From the *Daily Telegraph*, Harrisburg, Pa., Wednesday evening, August 13, 1873:

"*The Late Storm in Maryland.*

"BALTIMORE, *August* 12.

"In consequence of the heavy rain, a freshet occurred on the Baltimore and Ohio railroad, at an early hour this morning, between Harper's Ferry and Point of Rocks. A large amount of earth was washed down on the track at Knoxville, and also at a point near the tunnel at Point of Rocks. Two freight engines ran off the track, causing a delay of the trains. The track is now clear.

"On the Washington County branch three trestle bridges were

washed away. Arrangements have been made for the transfer of passengers. The bridges will be rebuilt immediately."

"Furious rain and hail storm passed over portions of Luzerne county, about Scranton, this afternoon, doing great damage. The Lehigh and Susquehanna railroad sustained great damage at Moosic, about six miles below this city. A land slide covered the track for a distance of about one hundred yards. At several points the track was undermined to a great extent. * * * *

"*Another Rain Storm.*

"BALTIMORE, *August* 12.

"A dispatch from Frederick says the storm this morning was the most terrific known for years. Rain fell in torrents accompanied by thunder and lightning. Much damage was done to corn, fences, culverts, roads, bridges, etc."

"The rain of last night was decidedly heavy. It poured down in torrents, and umbrellas were no protection to those who happened to be on the streets."

"*Damage Caused by the Heavy Rains.—A Landslide, etc.*

"During the heavy rain last night, a plank was washed across the south track of the Pennsylvania railroad, east of Granville station, and, occurring only a short time before the Cincinnati Express from the west arrived, the engine of that train had its truck thrown from the track. Nobody was hurt, and the obstruction was removed in a short time.

"The same rain caused a very heavy landslide about one and a half miles west of Black Log, in Lewistown Narrows, covering both tracks with trees, rocks, mud, etc. It was expected that the trains would be at least twenty-four hours late, but the tracks were cleared in time to permit the Southern express to pass, and it reached here only one hour late. The Cincinnati Express, Philadelphia Express, and Fast Line east, and Southern Express and Pacific Express west passed around by way of Lewistown and Sunbury, the eastward bound trains reaching here from seven to twelve hours late. The road is clear again, and trains running as usual. No person was hurt, and the damage is trifling."

From the paper of Thursday evening, August 14, 1873.

"*From New York.*

"NEW YORK, *Aug.* 14.

"The threatening weather of the past two days culminated yesterday in a very disagreeable storm. The day was cold and cheerless. Rain commenced falling early in the afternoon and continued incessantly throughout the night, increasing intensely as darkness set in. During the day, reports reached this city from different points of the prevalence of a severe storm, in consequence of which trains on all the different lines were detained.

"The mails, especially from the South, were behind to the extent of several hours, and business in consequence was somewhat deranged. The Erie mail last evening was 3 hours and a half behind time, and the southern mails were four hours late. On the North and East rivers the water was very rough, and the winds raged fiercely, but the ferry boats made their usual trips. The weather this A. M. is a continuation of that of yesterday. Rain has been falling heavily all night, and a fierce gale is blowing.

"A dispatch from Long Branch, received late last evening, stated that the wind and surf were rising, and much damage was expected along the shore."

"*The Great Storm: A Perfect Deluge of Water: Damage in all Directions: Landslides on Railroads: Pennsylvania: Landslides: Dams Carried Away.*

The heavy rains of last night caused a large landslide, ten feet deep, about four miles west of Mifflin. The trains were delayed several hours, but are now passing all right, and tracks will be clear about noon.

High Winds.

ALLENTOWN, *Aug.* 13.

Storm not heavy. No damage. The wind was very high through the night.

The Schuylkill Rising.

POTTSVILLE, *Aug.* 13.

Rained since 11 o'clock. The Schuylkill river is high. No damage reported.

Bridges Destroyed.

LANCASTER, *August 13th.*

The city waterworks are considerably damaged by the severe storm of last night; the coffer dam is carried away. The water rose four feet in one hour. Several small bridges and numerous fences are washed away.

Rumors of Damage in Chester.

CHESTER, *August 13th.*

The streams in our vicinity have been swelled greatly by the rains of last night and to-day. It is too soon to arrive at results, but we hear rumors of damages incurred, and will report them as soon as definite results are arrived at.

Lehigh and Susquehanna Railroad Badly Wrecked.

The Scranton *Republican* of yesterday says the storm played terrible havoc with the track of the Lehigh and Susquehanna road near Moosic. The damage extended for the distance of at least an eighth of a mile. In some places the track was covered with mud, trees, logs, and other debris, and at others the foundation was entirely washed away, leaving open chasms, one of which was not less than fifty feet in width and forty feet deep, spanned by nothing but the rails, to which clung the ties, held by spikes from the former. It is astonishing how so much damage could be done in so short a time, as the storm lasted scarce half an hour. Large hailstones completely covered the ground, and the wholse scene was truly one of devastation and disaster. Large gangs of workmen were immediately put to work repairing the damage and continued all night.

NEW JERSEY.

A Heavy Gale Prevailing—The Severest Storm in Twenty Years.

LONG BRANCH, *August 13th.*

A heavy gale is blowing here, and the surf is running high. The bathing-houses have been removed to prevent their being washed away. The shore is lined with people witnessing the magnificent appearance of the sea. The storm is increasing. Passengers for the 11 o'clock train to New York have returned to this place, and report that the track has been washed away between here and Sandy Hook. The New Jersey Southern Railroad track, between this place and Philadelphia, is washed away. No train has yet arrived from Philadelphia to-day. The storm is the heaviest here for twenty years.

Later from Long Branch.

LONG BRANCH, *August* 13.

The storm is increasing, and it is now blowing a terrific gale. It is thought the surf will rise and carry off the bathing-houses before midnight. The New Jersey Southern track at Seabright is in danger; much damage is expected along the shore.

Severe Rain at Trenton.

TRENTON, *August* 13.

The track of the Pennsylvania Railroad at Palmyra is washed out for about fifty yards; the company's force are now engaged repairing. The rain was very severe and considerable damage has been done.

The Storm at Cape May.

CAPE MAY, *August* 13.

Heavy rain set in at six o'clock last evening and continued till after midnight. No damage done. The weather is delightful this morning.

Atlantic City.

ATLANTIC CITY, *August* 13.

Rained in torrents during the entire night. It caused no damage or inconvenience further than to keep our people in doors.

New York Trains Delayed.

NEW YORK, *August* 13.

Trains from Buffalo which arrived to-day several hours behind time experienced great difficulty between Corning and Elmira, the flood covering the track for two miles to the depth of nearly two feet, the cars having to make their way slowly through mud, gravel and driftwood, nearly extinguishing the fires in the locomotives.

Railroad Bridge Washed Away.

ELMIRA, *August* 13.

The bridge over Monkey Run on the Erie Railroad, about 14 miles west of here, was carried away this morning.

Canal Break.

100 feet of the bank of the Chemung canal feeder, near Corning, were washed out. A dam on one of the creeks broke away and carried off a dwelling house during the height of the storm. The owner of the house, with his wife and daughter, sought refuge in the barn. The building was washed away and scattered over the fields; the man was so much injured that he cannot recover; the wife and daughter have not yet been found.

Erie Trains Delayed.

Trains on the Erie Railroad were delayed some six hours by the carrying away of Monkey Run bridge.

DELAWARE.

A Storm on the Philadelphia, Wilmington and Baltimore Railroad.

WILMINGTON, *August* 13.

A heavy storm last night washed the track in several places more or less. At Kirkwood, on the Delaware division, a culvert was washed out to such an extent that the track was impassable for a few hours. Trains passed all right at 5 A. M. At a small stream south of Newark, Del., a culvert was washed, and the night trains north and south delayed. Passengers were transferred early in the morning, and the trains will cross about noon. No serious injury has been done beyond the detention to the night passengers.

Damage at Newark.

NEWARK, *August* 13.

A most severe storm began at 5 o'clock last night, and White Clay creek is overflowing. The Philadelphia and Baltimore railroad track at the culvert, about half a mile from the station, has been washed away, and the passengers on the Baltimore train of last night are now being transferred to that point. At this hour the railroad folks have everything nearly in shape, and the trains will be passing over the gap by 12 o'clock; and the trains will be making their usual time this afternoon.

MARYLAND.

BALTIMORE, *August* 13.

Torrents of rain have been falling incessantly since noon to-day to 11 o'clock to-night, with no signs of letting up. Jones' falls is very high, and the water is still rising, threatening a flood. The residents along its banks are alarmed, and many of them are preparing to move. The streets all over the city are much flooded, and many cellars filled, doing considerable damage. Reports have also been received here of serious freshets in Washington county, near Hagerstown; also, in Frederick, Montgomery, Carroll, and Baltimore counties. Much damage has been done along the Western Maryland and Northern and Central railroads, interrupting trains. The Patapsco river and other streams between here and Washington are greatly swollen, and apprehensions of disaster are felt seriously. The telegraph wires in many portions of the State are down, and there is much trouble in obtaining news.

The Damage to the Philadelphia, Wilmington and Baltimore Railroad.

BALTIMORE, *August* 13.

A culvert and portion of the track on the Philadelphia, Wilmington and Baltimore railroad near Elkton station were washed away by the heavy rains last night, delaying all trains. The airline train from New York due here at five o'clock this morning did not reach the city until a quarter past 12 o'clock P. M. It took a large force of workmen three hours to repair the break; trains are now running regularly. The branch road from Petryville to Port Deposit also suffered from the storm, large masses of rock being washed upon the track and a culvert carried away, completely obstructing travel.

Landslide on the Potomac.

During the prevalence of the heavy rain-storm to night, a landslide took place on the open cut of the Baltimore and Potomac Railroad tunnel, near Pennsylvania Avenue in this city, preventing trains from runing either way. A force of workmen are now engaged in removing the obstruction.

DISTRICT OF COLUMBIA.

Damage to the Crop.

WASHINGTON, *August 13th.*

The crops within a radius of twenty miles of Washington were seriously damaged by yesterday morning's storm. There was another rainstorm here this afternoon.

The rain of the past few days has caused the river to rise very rapidly, and during last night it rose about five and a half feet. A number of boats belonging to different parties were carried away, and a sandflat belonging to Jacob Schlayer also went down stream. The Paxton creek is also considerably swollen, and the water is over the banks. The prospects for a large freshet are very good, as the rain of last night seems to have been general.

Articles from the *Daily Telegraph* of Friday evening, August 15th, 1873:

The City in a Shower—Tremendous Fall of Rain—The Union Depot Inundated.

A tremendous body of water fell upon the city last night, between five and six o'clock; the rain poured down as if the clouds had been squeezed together and wrung dry over our heads. Seventh Avenue

was a raging torrent, which distributed itself over Smithfield and Liberty streets until there was absolute danger in attempting a crossing. The break in the Fourth Avenue sewer was not yet repaired, and from it the water poured into the Panhandle tunnel, filling it so that the fires in locomotives attempting to pass through were extinguished, and the engines were compelled to come to a dreary halt in the darkness. The water rushed out the end near the Union Depot, flooding the Panhandle Railroad yard, and overflowing into the streets in front of the depot, making them impassable for a time; the platform at the depot was covered to the depth of half a foot, and before six o'clock there was over ten feet of water in the cellar of the structure. A train full of passengers from the West were caught in the tunnel and remained immovable, as the water put out the locomotive's fire. Another engine, with a full head of steam, was sent in, and succeeded in pushing the train nearly out when it, too, succumbed. A third was more successful, and managed to run the cars down to the depot, but here the difficulty of reaching a dry spot occurred. The gallantry of the gentlemen, however, prevailed over the moist circumstances, and the lady passengers were carried through the water by a number of strong-armed volunteers. Last night two of the steamers of the fire department, under the direction of Assistant Engineer Hammill, were busily engaged in pumping out the cellar. In other parts of the city streets were inundated, and forced pedestrians were uncomfortably fixed for a while. So vast a fall of water has seldom been experienced here within so short a time.—*Pittsburgh Despatch* yesterday.

From New York: The Storm on the Coast.

NEW YORK, *August* 15.

* * * * * * * *

During the past three or four days the storm which has been gathering on the Atlantic coast reached its culminating point apparently on Wednesday, when the centre disturbance moved from Pennsylvania to New Jersey and New York. Our reports so far show the greatest amount of damage done in Pennsylvania, the city of Philadelphia and suburbs having suffered materially. In the immediate vicinity of this city there has been no great destruction of property, but all along the New York coast the tide has been unusually high and the gale violent.

At Jersey City the cellars and ship-yards were flooded, while at Long Branch the beach was seamed and broken up; also some bathing boats destroyed. In this city rain fell in torrents, accompanied at times with high winds. The yachts of the New York club fleet, which left Glen Cove on a cruise to Newport, were driven by the heavy winds into quiet waters, and nearly all are now storm-bound in New Haven harbor. No marine disaster has been reported, although several incoming vessels narrowly escaped running ashore below Sandy Hook during the gale on Wednesday night.

Maryland: Effects of the Storm: Railway Damages: Travel Delayed, etc.

BALTIMORE, *August* 14.

The rain storm which commenced in this vicinity on Tuesday night raged with unexampled fury last night. The streets in various parts of the city were submerged, and a large number of cellars flooded. Jones' fall overflooded its banks, and a portion of the old flooded district was again inundated. The water in some places was four and five feet deep, but in no instance reached above the first floors of dwellings.

The utmost consternation prevailed for a time among the denizens of Harrison and the adjacent streets, but about 10 o'clock this morning the water subsided. All the railroads running to this city were more or less damaged, and the detention of mails was more general than on any previous occasion for years. On the Baltimore and Ohio railroad last night there were small landslides at Red Cut and Vinegar Hill, and a wash at Elk Ridge Landing, which threw the Cincinnati express train bound west off the track. No damage was done to the train. The St. Louis express, due here at 10 P. M., was delayed at the same point. A culvert has been washed out, and there were one or two minor washes between Elk Ridge Landing and Annapolis Junction. There were two landslides on the main stem west of the relay-house, between there and Ilchester, and minor breaks between Ilchester and Point of Rocks. The Washington branch was in working order at ten o'clock this morning.

The track at Severn station on the Baltimore and Potomac Railroad was submerged, delaying all trains.

The officers of the Northern Central Railroad state that their road has not been affected by the storm.

Bridge Carried Away.

The county bridge on the turnpike at Elk Run Landing was washed away during the storm last night, carrying with it five wires of the Western Union Telegraph Company, but the business of the line is not interrupted.

Breaking of a Tunnel.

In consequence of the bursting of a portion of the Hartford Tunnel between 12 and 1 o'clock this morning, the dividing walls of dwellings Nos. 270 and 272 Bond Street gave way, causing the destruction of two back buildings. All the kitchen and dining room furniture was precipitated into the stream, and the inmates barely escaped.

Damage to Potomac Railroad: Entire Stoppage of Trains.

The damage by the storm last night to the Baltimore and Ohio and Potomac Railroad is so serious that travel will be entirely suspended for several days. The passenger trains which left Washington last night for this city over this road came no further than Stony Creek, 14 miles from here.

It was found impossible to return, and the passengers, 40 or 50 in number, were forced to remain in the cars all night, and some of the women and children were not taken off the train until six o'clock this evening.

WASHINGTON, *Aug.* 14.

The severe storm which commenced here on Tuesday night still continues, with no prospect of ceasing. Much damage has been done to property in the city, and some of the largest sewers have been washed out. Up to 11 o'clock no train over the Baltimore and Ohio Railroad from Baltimore had reached here, owing to the track being washed out. The New York and Philadelphia Express, due at 6.30 a. m., had not arrived at noon.

The recent rains have washed away considerable quantities of ground from Crescent street. The street is in a terrible condition.

High Water.

The late heavy rains have swollen the mountain streams much beyond their usual limits, and considerable damage has been sustained by those living "in the lowlands." The Yellowbreeches, Conodoguinet, and other creeks have been on the rampage for the last 48 hours, sweeping away fences and bridges, and filling the Susquehanna with floating débris and driftwood. We learn that some injury has been sustained by the lower dam of Mosser and Shoop, at the mouth of the Yellowbreeches, but the exact extent of the injury we have not yet been able to learn. The Susquehanna is about 12 feet above low-water mark, and is still rising. If "Old Probabilities" hasn't made a mistake again the danger will soon subside. Camp-meeting folks may not be able to appreciate this moist atmosphere, but corn growers are quite jubilant, and so they should be. Verily, it's an ill wind that blows nobody good.

Articles from the *Daily Telegraph* of Saturday evening, August 16, 1873:

The Late Storm: High Water: Millions of Feet of Logs Escape: Present Stage of the River: The Storm at Elmira and Corning: A Family Swept Away: Tobacco, Corn, and Other Crops Damaged Beyond Estimate.

[*From the Williamsport Gazette and Bulletin yesterday.*]

The river continued to rise all last night, and at ten o'clock this forenoon marked 13 feet above low-water mark. Contrary to the expectations of many who were last evening of the opinion that 11 feet would be the extent of the flood, at 12 o'clock the height of water was 13 feet and 6 inches, and still slowly rising. This morning a boom below DuBois-

town, owned by Brown, Early & Co., broke, and about 2,000,000 feet of logs escaped. The boom below the bridge, and the one above the dam, also broke this forenoon. Since daylight this morning it is estimated that between six and eight million feet passed below. The logs will doubtless be caught at Northumberland or Sunbury, at least the greater portion of them.

Along the New York and Erie Railroad.

The Elmira *Gazette* publishes the following particulars of the storm in that locality:

On Tuesday the wind blew fresh from the west, southwest, and, ere nightfall, sharp lightning and rumbling thunder, with angry clouds chasing each other through the heavens, betokened a storm of more than ordinary violence. The storm burst forth in great fury and in its long and devastating track may be found the ruins of homes, destruction of crops, and great damage to property.

At Corning, Lawrenceville,

And vicinity, the water seemed to come down in sheets and rendered the sheets almost navigable with boats. Streams in the vicinity of

Gibson's Dam

Swelled with fearful rapidity carrying everything before them. The canal broke away about one mile east of the dam carrying away about 100 feet; it will cost $5,000 to repair it.

The Erie Railway

Was seriously damaged and obstructed. The little stream, Monkey Run, which gives them more trouble than any other stream during high water, was particularly wild and restless, taking even large stones from the abutments of the bridge that crosses it near Corning, and carrying them into the fields below. The saddest circumstance that has yet come to our knowledge occurred at

Castor's Mill,

About 5 miles north of Corning, about 9 o'clock Tuesday evening. French's Creek had swollen to unusual proportions and the water coming down with resistless force carried away the dam, the water rushing into the residence of Mr. David Castor. Seeing their danger Mr. C. with his wife and adopted daughter sought refuge in the barn, which they reached in safety, and Mrs. Castor and daughter succeded in getting upon the hayloft. Mr. C., however, was caught by a large timber while attempting to climb the ladder and so firmly held he could neither speak nor extricate himself. Unfortunately the barn did not prove to be a place of safety; it was carried from its foundations and with it its living freight into the gulf, it is feared, of death. Mr. Castor was found about 30 yards from the barn, among timber, brush and rubbish, insensible, and at the latest advices there were no hopes of his recovery. Nothing has been discovered up to a late hour regarding the fate of Mrs. C. and daughter, and there is but little doubt both are drowned. Mr. Castor

was about 45 years of age and highly respected. This unfortunate and sad affair casts a gloom over the entire community.

It is reported that the crops, especially

Tobacco and Corn,

have suffered terribly by rain, hail, and flood; hailstones falling in some places the size of walnuts.

At Canton and Vicinity

the rain rushed down in torrents, the water rushing from the hills into the fields and valleys, causing the people to seek places of safety on higher grounds.

Flood in Somerset County—Damage to Property.

The neighborhood of Stoystown, Somerset county, was visited by a fearful storm, and some of the particulars regarding it are furnished from the following despatch to the Pittsburgh *Commercial:*

This locality was visited yesterday by one of the most terrific rain-storms known in the history of this county. The rain commenced falling about 12 o'clock with such rapidity that tiny rivulets were in a few moments swollen to roaring torrents.

The rain was accompanied with hail of very large size, though the hailstones were fortunately not numerous. A great deal of damage has been done along all of the mountain water-courses, though the principal cases reported at this writing seem to have been along the banks of a small stream known as Beaver Dam. A number of mills, principally lumber-mills, are located on this stream. Of these all sustained more or less damage. The dam of Bear's mills, near the headwaters of the stream, is known to have been swept away, and nearly all the bridges are supposed to be gone. The farmers along the banks of the stream also suffered heavy losses. The entire valley, averaging about one mile in width, was completely flooded, and everything in the way of the flood was swept away. The streams were literally covered, for some hours after the storm had passed, with lumber, fencing-rails, shocks of grain, stacks of hay, farming utensils, etc. No lives are known to be lost. Several days must elapse before anything like an estimate can be made of the damage done.

Middletown

was visited yesterday afternoon with one of of the heaviest rains that was known for many years. The gutters and streets were filled with water, and it was a difficult matter for persons having business on the street to navigate. Many of the streets presented the appearance of small streams, and many of the cellars were filled with water."

Article from the *Daily Telegraph* of Monday evening, August 18, 1873:

The Rain.

"Six and a quarter inches of rain fell in this city between Monday of last week and noon to-day; this quantity is unprecedented for so short a time, as the average *yearly* fall is from eleven to twelve inches."

November 23, 1883, 10 *A. M.*

Examination resumed, pursuant to adjournment. Present, same counsel.

HENRY OTSTOT, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

My age is forty-eight; residence, Silver Spring, Cumberland county, Pa.; occupation, blacksmith.

Q. 1. Do you know Daniel Drawbaugh, of Eberly's Mills, Cumberland county, Pa.? If so, how long have you known him?

A. I have known him since about the year after President Lincoln was killed.

Q. 2. Were you ever in Mr. Drawbaugh's shop at Eberly's Mills? If so, how many times were you there?

A. I was in twice.

Q. 3. When was the last time that you were in Drawbaugh's shop, and how happened you to go there at that time?

A. It was on the day of George Heck's sale; I went there to buy a drill machine to drill iron.

Q. 4. Did you attend George Heck's sale that day?

A. Yes, sir.

Q. 5. Was George Heck living or dead at that time?

A. He was dead, I guess, as far as I know.

[*Answer objected to by Mr. Howson as not evidence.*]

Q. 6. Was that the administrator's sale of his effects?

[*Objected to as incompetent.*]

A. I am satisfied that he was dead; I don't suppose there would have been a sale if he had not been dead; I didn't intend to go to the sale, but was down at Mr. Drawbaugh's that day, and then went to the sale.

[*Answer objected to as not evidence.*]

Q. 7. Where was the sale?

A. In Milltown.

Q. 8. At what house or place in Milltown?

A. He lived up on the hill from the mill, in a farm-house, where he farmed.

Q. 9. Was that the George Heck who was trying to get the nomination for sheriff of Cumberland county, and died during the time that he was making that effort?

A. Yes, sir.

Q. 10. You have told us about the last time when you were at Mr. Drawbaugh's shop. Now, will you please tell us when was the first time that you were at Mr. Drawbaugh's shop?

A. It was between 1870 and 1871, as near as I can recollect.

Q. 11. Do you mean in one of those years—1870 or 1871?

A. Yes, sir; in one of them years.

Q. 12. On either of those two visits which you made to Mr. Drawbaugh's shop, did you see any talking-machines there, or not?

[*Objected to as not rebuttal, this objection to apply to all succeeding questions upon the same line of inquiry.*]

A. Yes, sir; the first time I was at his shop.

Q. 13. The first time you were at Mr. Drawbaugh's shop, did or did not anybody go there with you; and if so, who?

A. Yes, sir: John H. Stephens.

Q. 14. A gentleman named John H. Stephens was examined as a witness in this case on behalf of respondents in May, 1881, [see respondents' printed record, pp. 259 to 265,] and testified that he was then forty-nine years old, resided in Hampden township, Cumberland county, near Shiremanstown, about three miles from Mr. Drawbaugh's shop, and was a farmer. Do you mean that man, or some other man?

A. That man.

Q. 15. How happened you to see the talking-machine in Mr. Drawbaugh's shop that day when you and Mr. Stephens were together?

A. I was looking around at his machinery through the shop, and I happened to see this machine, and asked Mr. Drawbaugh what it was. He told me it was a talking-machine, to talk to a distance.

Q. 16. Where was Mr. Stephens when you were looking around at Mr. Drawbaugh's machinery and saw the talking-machine?

A. As near as I can recollect, we were together all the time that we were in his shop.

Q. 17. What did you and Mr. Stephens go down to Mr. Drawbaugh's shop for that day?

A. To get his water-ram repaired; it was out of order.

Q. 18. Where was Mr. Stephens' water-ram situated?

A. At the foot of the hill at Orr's bridge.

Q. 19. Do you know who had put that ram in there for Mr. Stephens?

A. Mr. Drawbaugh.

Q. 20. Do you remember whether the ram had been put in there at Mr. Stephens' place very long before your first visit to Mr. Drawbaugh's shop or not?

A. It might have been in a year.

Q. 21. On whose place did you live at the time when you and Mr. Stephens went down to Mr. Drawbaugh's shop together?

A. On William Stephens'.

Q. 22. How far from John H. Stephens' place?

A. I lived on the same farm—about a hundred yards apart, the houses were. John lived in the farm-house and done the farming for his brother William who owned the farm; and I lived in the tenant-house and carried on blacksmithing.

Q. 23. When did you move into that tenant-house, and how long did you live there?

A. I moved there in the fall after President Lincoln was killed; he was killed in April; I lived there probably twelve or thirteen years, as near as I can tell.

Q. 24. If I understand you correctly, you do not remember seeing talking-machines at Mr. Drawbaugh's shop at the second time you were there—the time of Heck's sale, when you went to buy the boring-machine?

A. No, sir.

Q. 25. Will you please look at the exhibits "F," "B," "C," and "I," which the examiner will now place on the table before you, and tell us whether or not you remember seeing any of them at the time of your first visit to Mr. Drawbaugh's shop; and if so, which ones?

[*Objected to as leading, no sufficient foundation having been laid for the question.*]

A. I have seen this one, [indicating "C;"] I don't recollect of seeing any of the others.

[*Deposition objected to as not rebuttal.*]

Cross-examination, de bene esse, by Mr. Howson:

Cross-Q. 26. How long have you been living at Silver Spring?

A. Four years this next spring coming—since the spring of 1880.

Cross-Q. 27. Where were you living between 1878 and the spring of 1880?

A. I lived one year in Monroe—I think it is—I moved up there a stranger and hardly got acquainted—it is right opposite Roxbury.

Cross-Q. 28. How long ago did you first hear that this telephone suit was going on?

[*Objected to as immaterial.*]

A. Two years, anyhow.

Cross-Q. 29. How did you come to hear of it at that time?

A. By other people talking about it.

Cross-Q. 30. When and by whom were you first asked what, if anything, you knew about the talking-machine?

[*Same objection.*]

A. I was asked by Mr. Drawbaugh, about a year ago, I guess.

Cross-Q. 31. Don't you think it was more than a year ago?

[*Same objection, and further objected to as improper and without any foundation in the previous testimony.*]

A. I positively can't tell the exact time.

Cross-Q. 32. Your recollection is quite uncertain as to whether it is less or more than a year ago; is that it?

[*Same objection.*]

A. It is not less than a year.

Cross-Q. 33. Where was it that he saw you and asked about the matter?

[*Same objection.*]

A. At my shop.

Cross-Q. 34. He came there to see you for the purpose, did he?

[*Same objection.*]

A. That I can't say; he passed along the road.

Cross-Q. 35. Was anybody with him; and if yes, who?

[*Same objection,*]

A. There was, but I can't tell who it was.

Cross-Q. 36. How long were they with you that day?

[*Same objection.*]

A. They just stopped a few minutes.

Cross-Q. 37. Do you recollect what time or season of the year it was?

[*Same objection.*]

A. I don't recollect.

Cross-Q. 38. What time of the year was it when you went with Mr. Stephens to Mr. Drawbaugh's shop to see about repairing the ram?

A. I most think it was in the fall.

Cross-Q. 39. What person or persons, if you remember, were working on Mr. Stephens' farm at that time?

A. I don't remember.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 23d day of November, 1883.

FRED. M. OTT,
Examiner.

HENRY OTSTOT.

JOHN A. SPRENKEL, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

My age is thirty-six; residence, New Cumberland, Cumberland county, Pa.; occupation, public school-teacher.

Q. 1. Are you the son of Mr. John Sprenkel who testified here in this case a few days ago?

A. I am.

Q. 2. How long have you lived at New Cumberland?

A. I moved there on the 20th of August, 1874, and have been living there ever since.

Q. 3. Where did you live last before you moved to New Cumberland?

A. In Shiremanstown, Cumberland county.

Q. 4. How long did you live there?

A. I moved there about the first of April, 1874, and moved away on the 20th of August, 1874—nearly five months I lived there. It seems to me I moved a little after the first of April, because I had commenced my summer school; it was sometime in the spring of 1874, I don't recollect exactly.

Q. 5. Where did you live last before you moved to Shiremantown?

A. In Lisburn, Cumberland county.

Q. 6. How long did you live in Lisburn before you moved away in the spring of 1874?

A. In the spring of 1868, I believe, I moved to Lisburn.

Q. 7. You taught school in Shiremanstown in the summer of 1874, did you?

A. I did—a select school.

Q. 8. And you have taught at New Cumberland ever since?

A. I have.

Q. 9. Did you keep a diary in the year 1873?

A. I did from about the middle of June until near the close of the year.

Q. 10. If you have that diary with you, will you please look at it and state whether it contains any entries referring to heavy rains in August, 1873, and to the condition of the water in the Yellowbreeches creek at that time, and point them out to the examiner in order that he may copy them upon the record?

[*Objected to as incompetent.*]

A. This is the book. It is a diary that was printed for 1872, but I frequently manufactured my own diaries, and kept them as a diary and memorandum book. I have written on the leaf here "This diary was kept for 1873 from June 5th." This I wrote on the leaf in the year 1873. The book contains the following entries on the subject of wet weather in August, 1873: "Tuesday, August 12th, 1873, finished plowing tobacco at Bowman's. In the evening it rained."

"Wednesday 13th rained all day."

"Thursday 14th rained all day. Creek very high. In afternoon was requested to come to Shiremanstown to article for the school."

[*The entries in the diary objected to as not evidence of any of the facts therein set forth.*]

Q. 11. I see that reference was therein made to plowing tobacco; were you interested in raising tobacco that year?

A. I was.

Q. 12. Do you, or do you not, of your own memory now refreshed by the diary, remember the rains and the rising of the creek at that time?

A. I do.

Q. 13. What creek is the one referred to in the diary as being very high at that time?

A. What is known as the Yellowbreeches creek, forming part of the boundary line between Cumberland and York counties.

Q. 14. Is there any circumstance that causes you to remember whether that creek was unusually high at that time or not, besides the entry in the diary?

A. About two acres of my tobacco ground was in a meadow, and it didn't do so very well, owing to the rise in the creek and the rain, part of it being flooded. There is also another circumstance that I remember. Mr. George Dietrick, who was at that time a member of the school-board of Lower Allen township, came from Shiremanstown to Lisburn to see me with reference to teaching the school at Shiremanstown. On Thursday, the 14th, was the day he came—the day he requested me to article for the school. He was obliged to cross McClure's run, below Lisburn forge, about a hundred yards from the creek, which was so much swollen that he came near drowning in crossing; that is what he told me on that day.

[*Last clause of answer objected to by Mr. Howson as not evidence.*]

Q. 15. How far is Lisburn from Eberly's Mills, or Milltown?

A. About six or seven miles.

Q. 16. How far is New Cumberland from Eberly's Mills, or Milltown?

A. Nearly three miles, I think.

Q. 17. Lisburn and New Cumberland are small villages on the Yellowbreeches, the former above Milltown and the latter below, are they not?

A. Yes, sir.

Q. 18. While you lived at Lisburn prior to the spring of 1874, did you, or did you not, hear Daniel Drawbaugh's talking-machine invention talked about around the village of Lisburn by the people who lived there?

[*Objected to as leading, as inquiring for hearsay, and as not rebuttal.*]

A. I did.

Q. 19. While you lived at New Cumberland, from August, 1874, down to the present time, did you, or did you not, hear Mr. Drawbaugh's talking-machine invention talked about in New Cumberland by the people who lived there?

[*Same objection.*]

A. I did.

Q. 20. How long have you heard it talked about in New Cumberland?

[*Objected to as inquiring for hearsay and not in rebuttal.*]

A. Ever since I have been there, but more frequently within the last five or six years.

Q. 21. How long before you moved away from Lisburn did you hear the people living there talk about it?

[*Same objection.*]

A. Perhaps two or three years, as near as I can remember.

Q. 22. While you lived at Lisburn, and during the first two or three years that you lived at New Cumberland, what sort of remarks did you use to hear about Mr. Drawbaugh's devoting his time and labor to a talking-machine?

[*Same objection, and also objected to as leading.*]

A. The majority of persons thought that he had better devote his time to inventing something that was more practicable. While some were ready to concede that he was something of a genius, others thought that he was a foolish old man—silly—half-witted.

Q. 23. Did they regard the idea of trying to invent a machine to talk to a distance as evidence that the man was a sort of crank or lunatic?

[*Same objection.*]

A. Not believing that such a machine could possibly be invented, I suppose they so regarded him.

[*Deposition objected to as immaterial and not rebuttal, and cross-examination declined by complainants' counsel.*]

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 23d day of November, 1883.

FRED. M. OTT,
Examiner.

JNO. A. SPRENKEL.

Recess from 1 to 2.15 P. M.

GEORGE HOSLER, *being produced, affirmed, and examined, saith:*

Examined by Mr. Hill:

My age is thirty-eight; residence, Siddonsburg, York county, Pa.; occupation, shoemaker; I am also supervisor of the roads.

Q. 1. How long have you lived at Siddonsburg, and when did you move there?

A. It was my birthplace, but I moved away, and moved back the 25th of March, 1873. I was away one year; I lived there all my life but that year, except as a man's labor calls him away.

Q. 2. What year was it that you lived away from Siddonsburg, and from what time to what time did you live away from there?

A. From March 5, 1872, to March 25, 1873.

Q. 3. Where did you live from March 5, 1872, to March 25, 1873?

A. At a place called Eberly's Mills.

Q. 4. How far is Eberly's Mills from Siddonsburg?

A. To the best of my judgment it is about eight miles.

Q. 5. Did you ever live at Eberly's Mills before or after that time?

A. No, sir.

Q. 6. What occupation did you follow at Eberly's Mills while you lived there?

A. Shoemaking.

Q. 7. Where was your shop—in what building or buildings?

A. First across from the blacksmith-shop at the top of the hill; I moved from there on account of a bad roof; and second, I had my shop in what was called the mill office at the south side of the grist-mill.

Q. 8. While you lived there at Eberly's Mills that year, did you know Daniel Drawbaugh?

A. Yes, sir.

Q. 9. Were you in his shop at any time while you lived there?

A. Yes, sir; frequently.

Q. 10. Have you ever been in his shop since you moved away from Eberly's Mills, or not?

A. No, sir.

Q. 11. Will you look at the machines now shown you, marked exhibits "F," "B," "C," and "I," and tell us whether you ever did or did not see any of them in Mr. Drawbaugh's shop at Eberly's Mills?

[*Objected to as not in rebuttal, and also as leading, no foundation having been laid for the question. The objection to apply to all succeeding questions upon the same line of inquiry.*]

A. Yes, sir; I seen this piece, [indicating "C."] I remember well of seeing that or something that looked like it; I also saw that, [indicating "F"]; I don't recollect these other ones, ["B" and "I,"] but these two, ["C" and "F,"] I am positive I seen there. I may have seen the other two, ["B" and "I,"] and may not; I couldn't say.

Q. 12. Where were you living when you saw these two machines, "F" and "C," at Mr. Drawbaugh's shop?

A. At Eberly's Mills.

Q. 13. While you were living at Eberly's Mills, and running a shoemaker's shop there, was your shop quite a place of resort for the people to come in and talk, or not?

A. Yes, sir; they came in and out a great deal and kept company with me.

Q. 14. Did you, during the time you lived there, hear any talk among the people around there about Daniel Drawbaugh's talking-machine, or not?

[*Objected to as inquiring for hearsay, not evidence.*]

A. I heard frequent talk concerning the machine; it was even spoken of by children.

Q. 15. From what you yourself heard at that time, while you lived there, would you say that Mr. Drawbaugh's talking-machine was at that time a matter of common and general knowledge in the community there, and a subject of general conversation, or not?

[*Objected to as incompetent, and calling for mere inference, not fact.*]

A. It was, sir.

Q. 16. Do you remember any particular remark made by any person about Mr. Drawbaugh and his talking-machine while you lived there? If so, will you please state who the person was that made the remarks, and how he came to speak on the subject at that time, and what he said?

[*Objected to as inquiring for mere hearsay.*]

A. Mr. Emanuel Dietz; I heard him make a remark in my shop about Mr. Daniel Drawbaugh and his talking-machine. Drawbaugh was coming along in a stooping position, and Dietz said: "Here comes Dan Drawbaugh, the damned fool—he will go crazy trying to make a machine to talk to people away off."

Q. 17. You say Mr. Drawbaugh was coming along in a stooping position at the time, and you illustrated it by rising in your chair and bowing your head down as if in deep thought; does that describe the appearance of Mr. Drawbaugh at the time?

A. Yes, sir.

Q. 18. Have you any idea about what season of the year it was when Mr. Dietz made that remark?

A. It was in the fall, I suppose—rather cool weather—I think there was a little fire at the time. It was in the fall—what we call the fall.

Q. 19. You say that even the children at that time were talking about Mr. Drawbaugh's talking-machine; can you remember any children that you remember to have heard talking about it at that time while you were there?

[*Objection renewed.*]

A. I can remember one boy, who was a jolly little fellow and meant everything well. I used to plague him a little, and he said to me once: "Wait till Drawbaugh gets his talking-machine up; I can talk to you then."

Q. 20. What boy was that?

A. Daniel Fettrow's boy; his name was William Fettrow.

Q. 21. Who was the miller there at Eberly's mill while you lived at Milltown?

A. The man that owned the mill was Leonard; there were three millers there while I was there. The first was a man named Natcher; the second I don't remember, and the third was a man named Ross. I think he was an Englishman, and that his first name was Alexander; I don't remember any other millers being there during that time.

Q. 22. Who kept the store while you lived there at Eberly's Mills?

A. A man by the name of George Kissinger; I think his first name was George.

Q. 23. Do you remember an old man who lived near there named Daniel Hart?

A. Yes, sir.

Q. 24. Was he one of the people who used to be frequently in your shop or not?

A. Yes, sir; he was.

Q. 25. From the extent and frequency of the talk in that community at that time, while you lived there, about Mr. Drawbaugh's talking-machine invention, do you think that anybody could have been in the village and talked with the people there much at that time without hearing something about Mr. Drawbaugh's talking-machine, or not?

[*Objected to as leading, and as incompetent, because calling for mere opinion.*]

A. I think he would have to be what you would call a deaf man, in my opinion about the matter. Of course, I could not say what other

people heard or did not hear, but, in my opinion, they ought to have heard something about it, living close around there.

[*Deposition objected to as immaterial, and not in rebuttal.*]

Cross-examined. de bene esse, by Mr Howson:

Cross-Q. 26. Have you seen exhibits "C" and "F" at any time since you left Eberly's Mills, until to-day?

A. No, sir.

Cross-Q. 27. Who, within the last year or two, first talked with you about this matter of Drawbaugh's talking-machine, and when?

A. I can't tell, or particularly mind, of speaking to anybody but Mr. Daniel Drawbaugh, and that was very recently that he came to see me.

Cross-Q. 28. Was anybody with him when he came to see you?

[*Objected to as immaterial.*]

A. He was to see me twice. The last time I was out in the fields and he came to me himself; the first time Mr. Jacobs was with him.

Examination taken, reduced to writing, and by the witness affirmed and subscribed to before me, this 23d day of November, 1883.

FRED. M. OTT,
Examiner.

GEORGE HOSLER.

JACOB BARBER, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

My age is fifty-five; residence, Lower Allen township, Cumberland county, Pa.; occupation, farming.

Q. 1. How far do you live from Eberly's Mills?

A. About five miles and a half.

Q. 2. How long have you lived on the farm which you now occupy?

A. Forty-three years, with the exception of seven years—from 1850 to 1857—that I was in California.

Q. 3. What public offices have you held?

A. Commissioner, supervisor, and school-director.

Q. 4. Commissioner of Cumberland county?

A. Yes, sir.

Q. 5. How many members does the board of county commissioners consist of, and what are the duties of the board?

A. The board consists of three members; their duty is to lay the taxes, take care of the money-matters of the county—the money is all paid out on their orders. They are also to build and repair the county bridges and take care of the public property.

Q. 6. In what year were you first elected a county commissioner of Cumberland county?

A. In 1873.

Q. 7. Elected in 1873; when did you begin to discharge the duties of that office?

A. In January, 1874.

Q. 8. I suppose you were elected at the general election in October, 1873, were you not?

A. Yes, sir; it was in October that year, because the new Constitution was not made until after the election.

Q. 9. How long did you hold the office of county commissioner?

A. Eight years within a few days.

Q. 10. Then you went out of office in January, 1882, I suppose?

A. Yes, sir.

Q. 11. How long a term are the commissioners elected for?

A. Three years.

Q. 12. Mr. William Sadler, of Camp Hill, Cumberland county, Pennsylvania, testified in behalf of the complainants at Philadelphia last winter, [see pp. 1036 to 1054 inclusive, complainants' printed record,] that he was county commissioner for three years, from 1876 to 1879. Is that in accordance with your recollection?

A. Yes, sir; that is the time he was commissioner.

Q. 13. Were you ever in Daniel Drawbaugh's shop at Eberly's Mills, Cumberland county? If so, how many times, and when?

A. I was there in 1873, the latter part of July or beginning of August. I wouldn't be certain which of the two months, but one of the two months. I was never there but that once.

Q. 14. Will you tell us all about how you happened to go there on that occasion in the summer of 1873?

A. In 1873, I was a candidate for county commissioner of Cumberland county. George B. Heck, of Milltown, was a candidate for sheriff of the same county. The arrangement between George B. Heck and me was that he was to choose the delegates from Lower Allen township to go for himself, and also for me after he was through with them. Some time in July, before the convention and before these delegates were

elected, Mr. Heck died. Then the other sheriff candidate in the county came to see me, and they wanted to know if I couldn't make these delegates for them. I found I could do the best if I could make them for Mr. Totten. George B. Heck had picked on 'Squire Drawbaugh and Luther Gorgas for delegates before he died. Then I went to see Mr. Gorgas, and he wasn't at home. His mother told me that I would find him either at Milltown or at the machine-shop. I then went to Milltown, and didn't find him there. I then went to the machine-shop, and I didn't find him there. I, there in the shop, then met Daniel Drawbaugh and the 'squire, John B. Drawbaugh, who was to be the other delegate. I then asked Mr. John B. Drawbaugh if he could go for Mr. Totten if I had him elected as my delegate. He said he could. I then asked him if he knew whether Luther Gorgas would go for Mr. Totten if he was elected. He said he thought not. And then, while I was talking to 'Squire John B. Drawbaugh in the shop, there was a small chunk of a boy came in and began to look at these tin boxes or glasses that was there on the bench, and he then asked Daniel Drawbaugh some questions about them. That drawed my attention to them, and I asked, then, John B. Drawbaugh what they were. He told me they were a talking-machine. I told him, then, I guessed they wouldn't talk very much. He told me, then, the time would come when you could stand in the office and talk to a man in Harrisburg as plain as him and me was talking there. That is about all that was said about them that I recollect of.

Q. 15. Mr. William Sadler [see page 1042, complainants' printed record] testified that the county commissioners of Cumberland county at one time while he was a county commissioner had some business at the almshouse, and went there; and the steward there at the time showed a string telephone and Mr. Sadler heard talk through it. What, if anything, do you remember about that?

A. We went out there at the instance of the steward. We went there to see their new engine pump water from the spring up to the insane department. Mr. Coover, the steward, showed us this telephone. It was a string with some tin machine for us to speak in. Mr. Coover went to the upper story, or wherever he had this thing above, and he spoke through it, and I answered back to him; that was about all.

Q. 16. How long was that after the new pumping-engine had been put up at the almshouse?

A. It had been put up sometime in the summer, and this was in the

fall when we were out. The weather was getting cool when we were out.

Q. 17. Mr. Sadler thinks the directors of the poor were there at the same time; what is your recollection about that?

A. I don't think they were there.

Q. 18. Mr. Sadler also testifies [p. 1,041] that he doesn't remember ever having heard of Daniel Drawbaugh's talking-machine before the year 1880. What have you to say about that?

A. I heard him speak of it while he was in the office there.

Q. 19. Heard whom speak of it while he was in what office?

A. Mr. Sadler—while he was in the commissioner's office.

Q. 20. Do you mean while he was county commissioner himself?

A. Yes, sir; while he was a county commissioner.

Q. 21. Did you hear him speak of it on several different occasions while he was county commissioner, or only on one occasion?

[*Objected to as leading.*]

A. I think I heard him speak of it several times.

Q. 22. You have testified about your visit to Mr. Drawbaugh's shop while you were canvassing for your first election as county commissioner; from the account which you have given, I should judge that that visit occurred between the time when Mr. George B. Heck died and the time when the Democratic nominating convention was held for that year; is that correct?

A. Yes, sir.

Q. 23. You were the candidate on the Democratic side for that office at that time, were you not?

A. Yes, sir.

Q. 24. Tell us whether or not you had ever heard of Mr. Drawbaugh's having invented a talking-machine before the time when you were at his shop in 1873?

[*Objected to as leading, and as inquiring for hearsay.*]

A. Yes; I had heard it spoken of.

Adjourned until November, 24, 1883, at 10 A. M.

November 24, 1883, 10 *A. M.*

Examination resumed pursuant to adjournment.

Present, same counsel.

Examination of JACOB BARBER *by Mr. Hill continued:*

Q. 25. In that election of October, 1873, at which you were elected county commissioner the first time, whom did the Republican party vote for as candidate for sheriff against Mr. Totten?

A. George Dietrich was nominated by the Republican party and run against Mr. Totten.

Q. 26. He now lives in Ohio, does he not?

A. Yes, sir; he did the last I heard of him.

Q. 27. Do you know John C. Comfort, of Cumberland county?

A. Yes, sir.

Q. 28. Did you ever have any talk with him about any of the matters referred to in your testimony here?

[*Objected to as immaterial and incompetent.*]

A. Yes, sir.

Q. 29. Tell us where it was that you had that conversation with him, and, as near as possible, when it was, and all the circumstances.

[*Same objection.*]

A. It was in the Harrisburg bridge sometime, I think, last winter. Mr. Comfort and I met in the bridge—he was driving the one way and I was driving the other. He called me to stop and I did stop. He got out of the buggy, then, and walked a little piece ahead, and told me to follow him. He says to me, then: "You said when you were at the Carlisle poor-house that that telephone there was the first telephone you had ever seen." I told him I hadn't said it was the first one I had ever seen. Then he said: "You be careful now, because you did say so." I told him then that I might have said it was the first one I ever talked through, but not the first one I ever seen. I told him then that I had seen Mr. Drawbaugh's before. He wanted to know, then, if I couldn't go to Philadelphia and swear that the one I saw at the poor-house was the first one I ever saw. I told him I couldn't; that is about the sum and substance of the conversation.

[*Answer objected to by Mr. Howson, proof of alleged conversations between the witness and other parties, or of alleged declarations made by this witness regarding the subject of this controversy, or matter pertaining thereto,*

at times long subsequent to the commencement of this controversy, being immaterial and incompetent.]

Q. 30. Did you tell Mr. Comfort in that conversation how long you had seen Mr. Drawbaugh's telephones before you had seen the string-telephone at Carlisle, at the alms-house?

[*Objected to for the same reasons, and also as leading, the witness having already fully given his recollection of the conversation.*]

A. Yes, sir; I told him I had seen it in 1873, when I was a candidate for commissioner.

Cross-examined, de bene esse, by Mr. Howson:

Cross-Q. 31. Where was Mr. Luther Gorgas living when you called upon him, as stated in your answer 14?

A. He was living with his father, near Eberly's Mills.

Cross-Q. 32. I understand from your testimony that you sought and obtained a nomination for county commissioner on three different occasions—in 1873, 1875, and 1878; is that correct?

A. Yes, sir; I guess that is about correct.

Cross-Q. 33. I understand that you have been living on your present property constantly since 1857; is that correct?

A. No; I went there in the spring of 1858, and have been living there all the time since then.

Cross-Q. 34. And your place, I understand, is only about five miles and a half from Mr. Drawbaugh's shop.

A. Yes, sir; about that.

Cross-Q. 35. Of the three offices mentioned in your answer 3, which did you fill first, and when did you begin to fill that office?

A. In the first place I was elected supervisor; I couldn't hardly tell you what year it was that I began to fill that office; I could if I was at home, but I couldn't here.

Cross-Q. 36. Can't you answer the question a little more definitely?

A. I was just studying. I was supervisor three years, but I couldn't tell you what years they were.

Cross-Q. 37. Can you answer any more definitely as to the office of school-director?

A. No, sir; I couldn't. I was school-director part of the time while I was supervisor, but I couldn't tell what years they were.

Cross-Q. 38. About how long ago did you first become a candidate for political office in Cumberland county?

A. It was between 1860 and 1870.

Cross-Q. 39. Was it between these years that you became supervisor?

A. Yes, sir.

Cross-Q. 40. Did you serve more than one term as school director?

A. Yes, sir; I was appointed for a short term, and then I was elected for three years afterwards.

Cross-Q. 41. You have testified to having made one visit to Mr. Drawbaugh's shop, which you think was in the year 1873. Tell us everything else that you recollect noticing in the shop on that occasion besides the tin boxes or glasses, which you state you saw on a bench there.

A. I saw different irons lying around there. I couldn't tell particularly what they were, or what they were for.

Cross-Q. 42. How recently have you met Mr. Sadler? Mr. William Sadler, I mean, referred to in your direct evidence.

A. I met him yesterday on the pike, but didn't speak to him any more than bid him the time.

Cross-Q. 43. When before that did you meet him?

A. I met him in Carlisle at last August court.

Cross-Q. 44. Both of you being residents of Cumberland county, and having been so for a great number of years, I suppose that you and he have met each other and had talk every now and then down to the present time. Isn't that true?

A. Yes, sir.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 24th day of November, 1883.

FRED. M. OTT,
Examiner.

JACOB BARBER.

LOUIS J. KLEIN, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

My age is fifty-two; residence, Mechanicsburg, Cumberland county, Pa.; occupation, prospecting for ore and minerals.

Q. 1. Did you ever clerk in a store at Shiremanstown? If so, for whom, and when?

A. Yes, sir; for Daniel Rupp; in April, 1871, I commenced.

Q. 2. How long did you clerk for him?

A. Till the latter part of March, 1872.

Q. 3. What was the name of Daniel Rupp's father?

A. Henry Rupp, senior.

Q. 4. Is he living or not; and if not, when did he die?

A. No, sir; he died in 1872, the latter part of January.

Q. 5. Do you know Peter C. Zimmerman who testified for the respondents in this case?

A. Yes, sir; I do.

Q. 6. Where was Mr. Zimmerman living while you were clerking for Daniel Rupp?

A. In Shiremanstown.

Q. 7. Do you know Daniel Drawbaugh, of Eberly's Mills; and if so, how long have you known him?

A. I have known him since about 1867 or 1868—along there—one of them two years; I don't just remember which year.

Q. 8. Tell us when and where you first heard of Daniel Drawbaugh having invented a talking-machine, and who was present and took part in the conversation at the time.

[*Objected to as new matter, not rebuttal, and leading.*]

A. In December, 1871, in Daniel Rupp's store-room at Shiremanstown; Henry Rupp, senior, Peter C. Zimmerman, and myself, were present and took part in the conversation.

[*Answer objected to by Mr. Howson as mere matter of hearsay.*]

Q. 9. What were you doing in the store at the time of that conversation?

A. Clerking.

Q. 10. What was said there at that time about Mr. Drawbaugh's talking-machine, so far as you remember?

[*Objected to as not rebuttal, and as an inquiry for hearsay.*]

A. Mr. Zimmerman said that Mr. Drawbaugh had a machine he could talk from one room to the other as distinct as we are talking here; that is, in the store-room.

[*Answer objected to by Mr. Howson as incompetent and not evidence.*]

Q. 11. What, if anything, did Mr. Henry Rupp, senior, say about it, so far as you recollect?

[*Same objections.*]

A. He appeared to have some knowledge of it.

[*Answer objected to by Mr. Howson as a gratuitous inference on the part of the witness.*]

The entire deposition objected to as immaterial and not in rebuttal.

Cross-examination, de bene esse, by Mr. Howson:

Cross-Q. 12. How long have you been living in Mechanicsburg, and how long carrying on your present business?

A. It will be three years till the spring that I have been at Mechanicsburg; I have been carrying on my present business about a year this last time.

Cross-Q. 13. When, and where, and for how long, did you carry on the same business at any previous time?

A. In 1872, 1873, and 1874 I was engaged in that business in York and Cumberland counties. I was in Harry McCormick's employment.

Cross-Q. 14. Where were you living during these years?

A. In 1872, 1873, and 1874, in Shiremanstown.

Cross-Q. 15. Where did you move to from Shiremanstown?

A. To Mechanicsburg.

Cross-Q. 16. How far from Mechanicsburg is Shiremanstown?

A. Between three and three and a half miles.

Cross-Q. 17. How long did you live in Mechanicsburg when you moved there from Shiremanstown?

A. It will be three years next spring.

Cross-Q. 18. Then, did you continue to live in Shiremanstown from 1871 down to 1881?

A. Yes, sir.

Cross-Q. 19. What was your occupation after 1874 down to the time when you resumed your present business?

A. In 1875, I worked at day's labor; 1876 and 1877, I butchered; 1878 and 1879, I burnt lime and trucked; 1880, I superintended for T. B. Bryson at a saw-mill and stave-factory, in Rye township, Perry county.

Cross-Q. 20. What were you doing in 1881?

A. Laboring.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 24th day of November, 1883.

FRED. M. OTT,
Examiner.

LOUIS J. KLEIN.

Recess until 2 P. M.

November 24, 1883, 3 *P. M.*

Examination resumed pursuant to adjournment. Present, same counsel.

SAMUEL H. BATES, *being produced, sworn, and examined, saith:*
Examined by Mr. Hill:

My age is thirty-six; residence, Shiremanstown, Cumberland county, Pa.; occupation, laborer.

Q. 1. If you ever heard anything said about Daniel Drawbaugh's inventing a talking machine, will you tell us when and where you first heard the subject mentioned, and how you happened to hear it mentioned at that time, and what was said at that time about it and about Mr. Drawbaugh?

[*Objected to as new matter not rebuttal, and also as inquiring for hearsay.*]

A. I first heard the subject on Sunday, the 21st of October, 1866, at Milltown. The subject was this: My companions and myself went to Martin Tates', who died, at Milltown at his residence that day, from hydrophobia. We went down from curiosity to see him. This was in the forenoon; he died in the afternoon some time. Mr. Drawbaugh was going towards Martin Tates' at the time. There was a group of men standing there in front of the grist-mill—I suppose it is; I am not well enough acquainted to know whether it is a grist-mill—standing there discussing something when I came by. One of the men made this remark: "Look at Daniel Drawbaugh; personally, you wouldn't think there is more in him than a block of wood, and the idea of a man like he to try to invent a talking-machine." One of the others remarked: "If he is successful in getting it finished, he will be the richest man in the valley." Now, then, you have got what I know about the talking-machine.

Q. 2. You speak of you and your companions going down there that day to see Martin Tates; if you remember who your companions were on that day, will you give us their names?

A. Jacob Carns, Warren Balsley, Jacob Balsley, George Fair; those are the names of the ones I am certain about. There was another man along, whom I am not certain about. I don't know whether it was Jacob Rupp or not.

Q. 3. Where were you living at that time?

A. At Shiremanstown.

Q. 4. How long had you been living in Shiremanstown at that time?

A. About a year, or close on to it.

Q. 5. You served in the army during the rebellion, did you not?

A. Yes, sir.

Q. 6. And at the expiration of your service, did you take up your residence at Shiremanstown?

A. I did, sir.

Q. 7. How long did you continue to live in Shiremanstown, and when did you move away from there?

A. I moved away from Shiremanstown in the spring of 1869.

Q. 8. Where did you move to?

A. Bridgeport, Cumberland county.

Q. 9. How long did you continue to live at Bridgeport, and when did you move away from there?

A. I lived there seven years, and moved away in the spring of 1876.

Q. 10. Where did you move to?

A. Shiremanstown.

Q. 11. How long did you then continue to reside again at Shiremanstown?

A. Up to the present time.

Q. 12. Have you ever been in Daniel Drawbaugh's shop at Milltown?

A. I have never been.

Q. 13. When you heard the conversation at Milltown about Drawbaugh and his talking-machine, on the 21st day of October, 1866, were you then personally acquainted with Daniel Drawbaugh?

A. No, sir.

Q. 14. Can you tell us about when you first became acquainted with him?

A. I got acquainted with him about two years after that, to know who he was.

Q. 15. I mean, when did you form his personal acquaintance so that you recognized and spoke to each other when you met?

A. I answer the question in that way; I mean that I got acquainted with him to speak to him at that time—about two years afterwards.

Q. 16. If I understand you correctly, you lived in Bridgeport from the spring of 1869 to the spring of 1876.

A. Yes, sir.

Q. 17. Bridgeport is a small village on the banks of the Susquehanna, opposite Harrisburg, and right at the end of the Susquehanna bridge, is it not?

A. Yes, sir.

Q. 18. Will you tell us whether Mr. Drawbaugh's talking-machine was, or was not, a subject of conversation among the people of Bridgeport, while you lived there?

[*Objected to on former grounds and as leading.*]

A. It was frequently talked of with a few persons that I knew.

Q. 19. You have spoken of Jacob Carns; did you or did you not ever hear Jacob Carns say anything about Mr. Drawbaugh's talking-machine?

A. Jacob Carns told me in 1878, that he saw Drawbaugh's talking-machine.

Q. 20. Did he tell you when he saw it, or where he was working, when he saw it?

A. He told me he was working for Drawbaugh at the faucet business.

Q. 21. And that he saw it at that time?

A. Yes, sir.

Q. 22. Where did Jacob Carns tell you that?

A. He told me this on the streets at Shiremanstown; we were walking together on the street.

Q. 23. Where was Jacob Carns living at the time when he told you that?

A. Living in the West.

Q. 24. And was at Shiremanstown on a visit?

[*Objected to as leading.*]

A. He was not exactly on a visit; he was home settling up the estate of his mother.

Cross-examined by Mr. Storrow:

Cross-Q. 25. In what capacity did you serve in the army?

A. I was a private, sir.

Cross-Q. 26. In what regiment and company?

A. Company C, 152d Pennsylvania volunteers, 3d Pennsylvania heavy artillery.

Cross-Q. 27. When were you mustered in?

A. The 22d of October, 1862.

Cross-Q. 28. When were you mustered out?

A. October 22d, 1865.

Cross-Q. 29. Where did you serve between the close of the war and the time when you were mustered out?

A. At Fortress Monroe.

Cross-Q. 30. While you lived in Shiremanstown, what was your occupation?

A. My occupation was—laborer.

Cross-Q. 31. Where did you live in Shiremanstown?

A. My parents lived in Daniel Flender's tenant-house.

Cross-Q. 32. What was your father's name?

A. Joseph.

Cross-Q. 33. Were you hired to anybody, or did you live at home, at Shiremanstown, at that time?

A. I lived at home.

Cross-Q. 34. Whom did you work for?

A. I worked on the Cumberland Valley Railroad.

Cross. Q. 35. When you moved to Bridgeport where did you live?

A. I moved into Keller's tenant-house.

Cross-Q. 36. What work did you do at Bridgeport?

A. I was a laborer.

Cross-Q. 37. Whom did you work for?

A. For James McCormick, Sam Zacharias, and for the Northern Central Railway Company.

Cross-Q 38. While you lived at Bridgeport was it a matter of common and general talk there that Drawbaugh had invented a talking-machine?

[*Objected to on the ground that the witness has already testified fully on the subject.*]

A. It was frequently talked of by the few that I knew.

Cross-Q. 39. Do you mean that it was frequently talked of by everybody that you knew?

A. Not by everybody—by a few that I knew.

Cross-Q. 40. Was this during all the time you lived there, or only during part of the time?

A. Conversation was not confined to any part of the time I was there; it was all the time till I moved away. It was not confined.

Cross-Q. 41. What was it that was said about Drawbaugh?

[*Objected to so far as anything that was thus said is intended to be used as evidence to establish any fact except the fact that Drawbaugh's talking-machine was a subject of conversation in the community, and was known and talked about at that time; that fact being evidence, and all beyond that being mere hearsay.*]

A. They were wishing him good luck in his success with his talking-machine, that he had thus far got the advantage of.

Cross-Q. 42. What else did you ever hear about him and his talking-machine while you lived at Bridgeport?

[*Same objection.*]

A. Not anything.

Cross-Q. 43. Did you hear this same talk once only while you lived at Bridgeport, or a good many times?

A. I have answered that question once before.

Cross-Q. 44. You may answer it again, and I repeat it.

A. I have answered it once, that it wasn't confined to one year only, but was continued from the time I moved there until I moved away.

Cross-Q. 45. Did you hear this conversation only once in each year, or several times in each year?

A. I can't answer that satisfactorily, to my recollection.

Cross-Q. 46. What is your recollection about it?

[*Objected to on the ground that the witness has already stated his recollection fully.*]

A. I have stated that, that it was wishing Mr. Drawbaugh luck in accomplishing his talking-machine as far as he had went.

Cross-Q. 47. You stated in your direct examination that it was frequently talked of while you lived at Bridgeport. Was it talked of frequently?

A. It was talked of; yes, sir.

Cross-Q. 48. Was it talked of frequently?

A. It was talked of—if you call frequently once, twice, or three times a year, it was talked that much I know. To my recollection, I couldn't tell you how often.

Cross-Q. 49. Where were these talks?

A. At Mr. Jacob Sweitzer's hotel, B. S. Wilder's hotel, and at Sam Zacharias' warehouse.

Cross-Q. 50. When you heard it talked of at those hotels, was it talked of privately among a few, or was it a matter of general talk among all who were present?

A. It was talked of as a matter privately—among a few.

Cross-Q. 51. In what part of the hotels did these talks take place?

A. In the bar-room part.

Cross-Q. 52. Did these talks take place there Saturday evenings?

A. No, sir; I never frequented the hotels myself on Saturday evenings.

Cross-Q. 53. As you lived at Bridgeport seven years, and as it is a small village, I suppose you knew most of the people there, didn't you?

A. I did, sir.

Cross-Q. 54. And I infer from your testimony that you didn't talk about it with everybody you knew, but with only a few of your acquaintances; is that the fact?

A. If my recollection serves me right, I never talked with any one, while living at Bridgeport, about the talking-machine.

Cross-Q. 55. Did you hear any one talk about it while you lived at Bridgeport?

[*Objected to as already fully answered two or three times.*]

A. Jacob Sweitzer, the hotel man, B. S. Wilder, and Sam Zacharias are the ones that I heard talk about the machine.

Cross-Q. 56. Did you ever hear any others talk about it while you lived at Bridgeport?

A. Only when they were in conversation with those men.

Cross-Q. 57. Did you ever join in the conversation yourself?

A. No, sir.

Cross-Q. 58. Then, when you said "It was frequently talked of with a few persons that I knew," did you mean us to understand that you never talked about it with any of them while you lived at Bridgeport?

A. I never talked with any one about the talking-machine while I lived there; I answered that once before—twice.

Cross-Q. 59. And the talk you referred to in that answer was talk between other persons that you just overheard in those places without joining in yourself; is that what you mean us to understand?

A. Yes, sir.

Cross-Q. 60. Did you ever yourself have any conversation with anyone about it before you left Bridgeport in the spring of 1876?

A. No, sir; I never did.

Cross-Q. 61. Can you remember anything else about these conversations you overheard except what you have stated?

A. No, sir.

Cross-Q. 62. What work did you do for James McCormick while you lived at Bridgeport?

A. Quarrying stone.

Cross-Q. 63. How near the railroad depot was his quarry?

A. About half a mile.

Cross-Q. 64. Does he own the only quarry there that is worked?

A. He did at that time.

Cross-Q. 65. When you quit Bridgeport and went to Shiremanstown, where did you live?

A. I lived in Widow Rupp's tenant house.

Cross-Q. 66. What work did you do there?

A. I worked on the Cumberland Valley railroad as a track hand.

Cross-Q. 67. Where were you when you think you had this conversation with Mr. Carns that you have testified about?

A. Walking on the streets.

Cross-Q. 68. Were he and you walking together?

A. I wouldn't suppose it would be anybody else I would be walking with when we were together by ourselves.

Cross-Q. 69. Do you remember that anybody else was with you?

A. There was no one together but him and I.

Cross-Q. 70. What time of day was it?

A. In the evening after I had quit work.

Cross-Q. 71. What part of the town was it?

A. It was well towards the upper end of the town—the end towards Mechanicsburg.

Cross-Q. 72. Where were you going at the time?

A. I was going home.

Cross-Q. 73. What month was it in?

A. I don't recollect.

Re-direct by Mr. Hill:

Q. Q. 74. There was one question which I forgot to ask you in the examination-in-chief, and will now ask you. At the time when you heard the conversation among the group of men near the grist-mill at Milltown on the day that Mr. Tates died, were your companions with you at that time, or had you separated from them?

A. I had separated from them.

Q. Q. 75. If you remember, state where and why you separated from them.

A. A call of nature caused me to separate from them before we got

to the village. They had got to Mr. Tates' house awhile before I got there.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 24th day of November, 1883.

FRED. M. OTT,
Examiner.

SAMUEL H. BATES.

JEREMIAH GRISSINGER, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

My age is thirty-eight; residence, Fairview township, York county, Pennsylvania; occupation, farming.

Q. 1. Where were you living, and what occupation were you engaged in, in the summer of 1873?

A. Farming, at the same place.

Q. 2. Who, if anybody, did you have for a hireling in the summer of 1873?

A. I couldn't say who was my hired man.

Q. 3. Have you any book here that will show who was employed by you during that summer?

A. Yes, sir.

Q. 4. Will you please produce it, and point out the items that refer to the hired man's accounts that summer?

A. Here it is; the entries on the page which I point to are the entries in question; the entries are in my own handwriting.

Q. 5. In what year were these entries made?

A. In 1873.

[*The examiner certifies that the entries referred to occupy one page of the book, beginning with the following words:*

"*William W. Hart*

Set in work on the 1*st day of April*, 1873, *at the rate of sixteen dollars a month for nine months.*"

Then follow various entries of cash payments from April 19 *to December* 19, *beneath which at the bottom of the page are the following words:*

"*Settled January* 16, 1874, *in full up to the present date.*"]

Q. 6. Your book shows that Mr. Hart was your hireling that year, does it not?

A. Yes, sir.

Q. 7. And by your second answer I suppose you meant that you could not testify, from your own recollection, as to the year that he worked, but had to rely upon the book; is that the idea?

[*Objected to as leading and improper in view of the witness's testimony.*]

A. That is the idea.

Q. 8. Do you remember anything about any flood in the Yellow-breeches, which carried away some watermelons and bridges?

A. Yes.

Q. 9. Did you, or not, go down to the creek to see the high water at that time?

A. Yes.

Q. 10. Who, if anybody, went with you?

A. My hired man went with me.

Q. 11. What did you see when you got down to the creek?

A. I saw high water; saw melons and pumpkins floating down on the water; also, part of a foot-bridge.

Q. 12. Were you above or below Etter & Shanklin's mill at that time?

A. Below, about one mile.

Q. 13. Do you remember what foot-bridges were reported at that time to have been carried away by the flood?

[*Objected to as hearsay.*]

A. I do.

Q. 14. What ones?

A. The foot-bridge at Etter & Shanklin's mill; the one at Zinn's clover-mill—it was called a clover-mill at that time, but it is a grist-mill now, although it is still sometimes called the clover-mill; the one at the wool-factory or fulling-mill. Zinn did own it a while; it was in different hands; I couldn't say who owned it at that time. I couldn't positively say who owns it now—it has changed so often.

Q. 15. Did you hear any report at the time as to where the watermelons came from that came down the creek?

A. I did.

Q. 16. Where?

A. Lisburn.

Cross-examined by Mr. Storrow:

Cross-Q. 17. How much of the foot-bridge did you see floating down stream?

A. To the best of my knowledge about one third of it.

Cross-Q. 18. Trestles or string pieces?

A. String pieces.

Cross-Q. 19. How near the creek do you live?

A. To the best of my knowledge about one fourth of a mile.

Cross-Q. 20. Does your land run down to the creek?

A. No, sir.

Cross-Q. 21. How far from Etter & Shanklin's mill is your house, by the road?

A. About three miles to the best of my knowledge.

Cross-Q. 22. Then are you quite close to New Market at the mouth of the creek?

A. The mouth of the creek is nearer to me than New Market village is to me. New Market is down below the mouth of the creek. My house is a mile and a half, as near as I can tell, from the mouth of the creek; New Market village is on the river about a quarter of a mile, as near as I can tell, below where the creek empties in.

Cross-Q. 23. Where did you get your milling done at that time?

A. At Andy Ross's mill, between my place and the mouth of the creek, on the York county side, within about two hundred and fifty yards of the mouth of the creek.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 24th day of November, 1883.

FRED. M. OTT,
Examiner.

JEREMIAH GRISSINGER.

Adjourned until Monday, November 26, 1883, at 10 A. M.

MONDAY, *November* 26, 1883, 12 *M.*

Examination resumed pursuant to adjournment.

Present, Mr. Howson for complainants, and Mr. Hill and Mr. Jacobs for respondents.

EMANUEL DITLOW, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

My age is twenty-seven; residence New Market, York county, Pa.; occupation, laborer.

Q. 1. Are you a brother of Joseph Ditlow and Abraham Ditlow who

testified in behalf of the complainants in this case, and of Mrs. Mary Evans who testified in behalf of the respondents?

A. Yes, sir.

Q. 2. Do you remember at what time your father died?

A. Yes, sir; February 21st, 1873.

Q. 3. Do you know Daniel Drawbaugh, of Eberly's Mills; and if so, how long have you known him?

A. Yes, sir; I can't tell you exactly how many years I have known him, but it is very long.

Q. 4. Did you, or did you not, ever hear of his talking-machine?

[*Objected to as not rebuttal.*]

A. I did.

Q. 5. Was it before, or after your father's death that you first heard of it?

[*Same objection, and objected to as leading.*]

A. Before.

Q. 6. Where were you living at the time when you first heard of it—that is, in whose family?

A. I was living at home in my father's family.

Q. 7. While you were living at home in your father's family, were you at the village of Milltown much, or not?

A. Much.

Q. 8. Did you ever hear Mr. Drawbaugh's talking-machine spoken of much around the village of Milltown about that time, or not?

[*Same objections, and objected to as inquiring for hearsay.*]

A. Much.

Q. 9. Would you say that it then was, or was not a matter of common and frequent conversation in and around Milltown?

[*Same objection, and also objected to as inquiring for inference, not fact.*]

A. I would say that it was.

Q. 10. From what you heard said about it there yourself, at that time, and the number of times you heard it spoken of, and the number of people that you heard speak about it, do you think that a person could or could not have lived in Milltown or its neighborhood, or been about that village much in the years 1872, 1873, 1874, and 1875, or any of them, without hearing of Mr. Drawbaugh's talking-machine; what is your opinion on that point?

[*Objected to as argumentative, calling for opinion and not evidence, and as leading.*]

A. I think not.

Q. 11. How long did you continue to live at home after your father's death?

A. Two years.

Q. 12. Give me your best recollection and belief as to how long you first heard of Mr. Drawbaugh's talking-machine before your father's death.

[*Objected to as leading.*]

A. It was several years.

[*The whole deposition objected to as immaterial, and not in rebuttal.*]

Cross-examined by Mr. Howson, de bene esse:

Cross-Q. 13. How far from Milltown is the place you are now living at?

A. About four or five miles.

Cross-Q. 14. Have you been in Harrisburg to give your testimony in this matter before to-day?

[*Objected to as immaterial.*]

A. No, sir.

Cross-Q. 15. When were you first asked to come here and testify?

[*Same objection.*]

A. On last Saturday.

Cross-Q. 16. Who saw you then about it?

[*Same objection.*]

A. Shank.

Cross-Q. 17. Was that the first time Mr. Shank had seen you on the subject?

[*Same objection.*]

A. Yes, sir; I believe it is, as far as I can recollect.

Cross-Q. 18. Are any of your family still living in and around Milltown; and if yes, who?

A. No, sir.

Cross-Q. 19. You have heard a great deal of talk about Mr. Drawbaugh's talking-machine within the last year or two?

[*Same objection.*]

A. I have heard some; yes, sir.

Recess until 2 P. M.

Cross-Q. 20. I understand that you lived on the same property which your father occupied, while living, down to 1875; is that correct?

A. Yes, sir.

Cross-Q. 21. Is that property close by the Yellowbreeches creek and close to the Etter & Shanklin bridge?

A. Yes, sir.

Cross-Q. 22. How lately have you seen and talked with Daniel Drawbaugh?

[*Objected to as immaterial.*]

A. I am not able to tell you.

Cross-Q. 23. With whom lately, before to-day, have you had any talk about Mr. Drawbaugh's talking-machine?

[*Same objection.*]

A. I talked with my brother Abraham.

Cross-Q. 24. Who else?

[*Same objection.*]

A. I believe that is all, so far as I know, lately.

Cross-Q. 25. When and where was that talk of yours with your brother Abraham?

[*Same objection, and further objected to as new matter not referred to in the examination-in-chief.*]

[*Question withdrawn in view of the objection.*]

Cross-Q. 26. How long have you been living in New Market?

A. Two years till March, 1884.

Cross-Q. 27. Where were you living before going to New Market?

A. At Peter Snyder's, right below New Market, York county.

Cross-Q. 28. How long were you living there?

A. About four or five months.

Cross-Q. 29. Where were you living before that, and how long?

A. I lived at Hefflefingers' that summer through harvest and hay-making.

Cross-Q. 30. You have been living and working at different places within a few miles of Milltown ever since 1875, have you not?

A. Yes, sir.

Re-direct by Mr. Hill:

Q. Q. 31. Whom did you work for in the summer of 1875?

A. For Mr. Wilt.

Q. Q. 32. How many summers did you work for him?

A. One.

Q. Q. 33. Where did you work in the two summers after your father's death—the summer of 1873 and the summer of 1874?

A. I worked around with the neighbors there—farmers—by the day, and lived at home.

Q. Q. 34. Since that time have you lived at home in the summer, or have you lived with the farmers with whom you worked, I mean, down to the time when you were married yourself?

A. I lived with the farmers before I was married; after I was married I was at my own home.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 26th day of November, 1883.

FRED. M. OTT,
Examiner.

EMANUEL DITLOW.

Adjourned until November 27, 1883, at 10 A. M.

November 27, 1883, 10 A. M.

Examination resumed pursuant to adjournment.

Present, same counsel.

WILLIAM W. HART, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

My age is thirty-four; residence, Lisburn, Cumberland county, Pennsylvania; I am helping my brother in his store there.

Q. 1. Do you know Jeremiah Grissinger, of Fairview township, York county?

A. Yes, sir.

Q. 2. Did you ever work for him as a farm hand on his farm?

A. Yes, sir.

Q. 3. In what year did you last work for him?

A. 1878.

Q. 4. Did you work then for him by the day or by the month?

A. By the day.

Q. 5. Did you ever work for him by the month? If so, in what year?

A. Yes, sir; in 1873.

Q. 6. How long did you work for him in 1873?

A. Nine months.

Q. 7. When did that nine months' work begin, and when did it end?

A. It began on the 1st of April, 1873, and ended on the 1st of January, 1874.

Q. 8. Did you or did you not do any work for him on his farm between the 1st of January, 1874, and the time when you began to work for him by the day in 1878?

A. No, sir.

Q. 9. While you were working for him in 1873, do you remember whether there was or was not a freshet in the Yellowbreeches creek?

[*Objected to as leading so far as the question includes time.*]

A. There was.

Q. 10. Did you see the high water in the creek yourself, or not?

A. I saw it myself.

Q. 11. Did you go down to the creek to look at it?

[*Objected to as leading.*]

A. I wasn't close to it; I was about seventy-five yards away.

Q. 12. Who went with you, if anybody?

A. Mr. Jerry Grissinger.

Q. 13. Do you remember whether, at that time, you saw anything floating down on the water of the creek? If so, what?

A. I saw watermelons, pumpkins, and part of a foot-bridge.

Q. 14. When you saw those things floating down stream at that time, were you above or below Etter & Shanklin's mill?

A. Below.

Q. 15. How soon after this did you go to Lisburn?

A. Within about a week.

Q. 16. Did you call Lisburn your home at that time?

A. There was where my father lived—not exactly in Lisburn, but close to there.

Q. 17. When you were at Lisburn at that time about a week after you saw the watermelons, pumpkins, and part of a foot-bridge floating down the stream below Etter and Shanklin's mill, did you hear anything

said about watermelons having been carried away by the flood; and if so, what?

[*Objected to as inquiring for hearsay.*]

A. I heard them say that Sipe and Wire's watermelons had been carried away.

Q. 18. Can you give us any information as to whether that flood did or did not carry away the foot-bridge at Etter & Shanklin's mill?

[*Objected to as leading.*]

A. No more than that I heard them say that it did.

[*Answer objected to by Mr. Howson as hearsay.*]

Q. 19. When did you hear them say that?

[*Objected to as incompetent and immaterial.*]

A. Within a week after it.

Q. 20. In what month was the flood, if you remember?

A. In August.

Q. 21. Do you know whether that road across the creek at Etter & Shanklin's mill is a road that is traveled much, or little by the general public?

[*Objected to as it has not been made to appear that the witness has any adequate means of knowledge upon the subject inquired of.*]

A. Not very much.

[*Deposition objected to as immaterial and not rebuttal.*]

Cross-examined, de bene esse, by Mr. Howson:

Cross-Q. 22. How many years have you been living in the neighborhood of Yellowbreeches creek?

A. I have been living all my life there—close to it—excepting three years that I was out in Texas.

Cross-Q. 23. Tell us how many floods or freshets in the Yellowbreeches creek you remember as having occurred within the last dozen of years besides that which you think occurred in August, 1873; and tell us, as nearly as you can, when each of the other freshets or floods, that you remember, occurred.

[*Objected to: first, as irrelevant and immaterial, the other floods having nothing to do with this case, and the date of this flood of August, 1873, being established not only by the witness' memory of dates, but by the fact that it oc-*

curred while he was working for Mr. Jeremiah Grissinger by the month; and secondly, as new matter not referred to in the examination-in-chief, that examination having been confined to such floods as occurred while the witness was working for Mr. Grissinger, in 1873.]

A. I don't remember exectly of any, but one in the spring of 1873, in March.

Cross-Q. 24. Where were you living then?

[*Same objection.*]

A. With my father, close to Lisburn.

Cross-Q. 25. Tell us what you recollect about the flood, where you saw it, and what, if any, damage you recollect being done by it.

[*Same objection.*]

A. I don't remember of any damage; I saw it in Lisburn.

Cross-Q. 26. From whereabouts in Lisburn did you view that flood, and who, if any one, was with you?

[*Same objection.*]

A. It wasn't exactly in Lisburn that I was when I saw it; Miss Laura Ensminger was with me at the time.

Cross-Q. 27. I understand you to say that besides this flood which you think occurred in August, 1873, the only other one which you particularly recollect was in the spring of 1873. I suppose that between that time and the present you have seen quite a number of freshets in the Yellowbreeches.

[*Same objection.*]

A. Yes, sir.

Cross-Q. 28. You have said that while you saw the flood, which you think happened in August, 1873, you saw part of a foot-bridge floating down the stream; what part of a foot-bridge did you see in that condition?

A. It was part of the wood.

Cross-Q. 29. During what three years were you in Texas?

A. I went out in the spring of 1866, and came back in the spring of 1869.

Cross-Q. 30. How long did you work for Mr. Grissinger in the year 1878?

A. I can't tell exactly; I kept no account.

Cross-Q. 31. What kind of work were you doing for him?

A. The work that is generally done on a farm.

Cross-Q. 32. During what season or seasons of 1878 were you working for him?

A. The summer—harvest—and in the fall.

Cross-Q. 33. Would your memory allow you to state how long, or about how long, you were working for him during that year?

A. No, sir; I can't remember.

Cross-Q. 34. Whom did you work for in the summer of 1875, and how long?

[*Objected to as irrelevant, immaterial, and as new matter not referred to in the examination-in-chief.*]

A. For myself; I commenced farming in the spring of 1875.

Cross-Q. 35. Have you any account of the time you were working for Mr. Grissinger in 1873?

A. I think I have the date when I commenced there.

Cross-Q. 36. You say you think; don't you know it?

A. Not till I look at a book that I have at home.

Cross-Q. 37. Then you haven't looked at that book lately; is that the case?

A. Yes, sir; that is the case.

Cross-Q. 38. Have you lately seen any other person's account of the time you were working for Mr. Grissinger, or any copy of any such account?

A. I saw Mr. Grissinger's book.

Cross-Q. 39. When and where was that?

A. On last Saturday, at the White Hall hotel.

Cross-Q. 40. Who showed it to you?

A. Mr. Grissinger himself.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 27th day of November, 1883.

FRED. M. OTT,
Examiner.

W. W. HART.

WILSON N. MILLER, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

Q. 1. Are you the same Wilson N. Miller who has been heretofore examined as a witness in this case both on the part of the defendants and on the part of the complainants? [See page 671, respondents' printed record, and page 1198, complainants' printed record.]

A. I am.

Q. 2. During Mr. Daniel Drawbaugh's examination as a witness in this case, [see questions and answers 592 and 593, pp. 895 and 896, respondents' printed record,] Mr. Drawbaugh testified in substance that on the third day of April, 1878, he paid Wilson Miller, for the use of J. R. Miller, twelve dollars and twenty cents for coal and freight; and he produced a receipt therefor, dated April 3, 1878, and in the words and figures following, to wit:

"White Hill, Cumb. Co., Pa., Apr. 3, 1878.
Mr. Daniel Drawbaugh Bought of [Daniel Drawbaugh crossed out]
J. R. Miller
Practical Machinist, small machinery, patent office models, electric machines etc a specialty.
Coal and Freight 12.20
Received payment
J. R. MILLER pr W. MILLER"

Will you please look at a receipt which I now hand you, and state in whose handwriting it is so far as it is not in print?

[*Objected to as not in rebuttal.*]

A. My handwriting.

[By consent, a copy of the receipt now produced and verified by the witness as in his handwriting, is put in evidence as "Exhibit Wilson Miller Receipt," the original to be marked for identification by the examiner and to be produced when called for. The receipt is as follows:

"White Hill, Cumb. Co, Pa., Apr. 3, 1878.
Mr. Daniel Drawbaugh Bought of [Daniel Drawbaugh crossed out]
J. R. Miller
Practical Machinist, small machinery, patent office models, electric machines &c a specialty.
Coal & Freight 12.20
Received payment
J. R. MILLER pr. W. MILLER."]

[*The document, a copy of which is put in evidence, is objected to by Mr. Howson as not in rebuttal.*]

Q. 3. Do you remember this payment of twelve dollars and twenty cents to you by Mr. Drawbaugh, as set forth in this receipt?

[*Objection continued.*]

A. Yes, sir; I do.

Q. 4. When you were examined by the complainants' during their taking of rebutting evidence, [see Complainants' printed record, pp. 1,198, 1,199,] you were asked to produce your account-books and show Mr. Drawbaugh's accounts with you, as the agent of your father, Mr. J. R. Miller, from the beginning of 1876 to the spring of 1878; in response to which you produced a ledger and day-book showing charges against Mr. Drawbaugh from December 14th, 1876, to November 23d, 1877, amounting in all to six dollars and thirty-one cents; and also showing a credit to Mr. Drawbaugh on April 4, by cash, six dollars thirty-one cents, which was evidently to balance the account, but showing no other charges or credits whatever; I now ask you whether the coal and freight referred to in "Exhibit Wilson Miller Receipt" was in whole or in part the coal referred to in your ledger and day-book, or whether it was another and different transaction, not entered on your account-books?

A. It was a different transaction from the account-books, for which he paid me the cash.

Q. 5. Then, if I understand your account-books, receipt, and testimony on the subject, Mr. Drawbaugh, on the 3d of April, 1878, bought from you some coal, and paid you in cash twelve dollars and twenty cents; and on the next day afterwards he paid you six dollars thirty-one cents more to balance your book-account; is that the fact or not?

A. Yes, sir.

Q. 6. Then, in those two days Mr. Drawbaugh paid you in all eighteen dollars and fifty-one cents, did he not?

[*Deposition objected to as not rebuttal.*]

Cross-examined, de bene esse, by Mr. Howson:

Cross-Q. 7. Is the J. R. Miller named in the receipt which has been offered in evidence, your father, J. R. Miller, who, as appears from your former testimony in this case, ran the mill known as Miller's mill, about two miles from Eberly's Mills, from 1866 to March, 1873; and, also, from 1873 to April, 1874, ran the mill at Milltown or Eberly's Mills?

A. Yes, sir.

Cross-Q. 8. While your father was running the Miller's mill and the mill at Eberly's Mills, where was he living?

[*Objected to as irrelevant to the examination-in-chief.*]

A. When he ran Miller's mill he lived at the mill, from 1866 to March, 1873; and when he ran the mill at Eberly's Mills he lived at Shiremanstown.

Cross-Q. 9. While your father was living at Miller's mill, were you living with him?

[*Same objection.*]

A. Yes, sir.

Cross-Q. 10. I suppose that during the years from 1866 to 1873, while you were living at Miller's mill, about two miles from Eberly's Mills, you were quite frequently at and around Eberly's Mills; was not that the case?

[*Same objection, and further objected to as leading, the complainants now making the witness their own by calling for testimony as to matters not alluded to in the examination-in-chief.*

Complainants' counsel replies that this witness was originally called by the respondents, was examined by the respondents as to matters occurring during the very period of time now being inquired of, and that it is competent to recall a witness so examined for further cross-examination, or to further cross-examine him, when he is recalled by the other side, upon any matters elicited during his former examination; and that, therefore, the present cross-examination is strictly such and competent.

Respondents' counsel denies the legal proposition expressed by complainants' counsel. The facts are as follows:

The witness was called and examined by the respondents while taking their evidence in support of their answer, and he was at that time fully cross-examined by Mr. Storrow on behalf of the complainant, and his deposition was closed. While the complainants were putting in their rebutting evidence, they in their turn called him as a witness upon another and different point upon which he had not been examined by the respondents, the object of the complainants being, apparently, to make the court believe that Mr. Drawbaugh, in his testimony, had over-stated his payment to Mr. Miller, or had put in evidence a false receipt, or both. The respondents now again call this witness for the purpose of rebutting this effort of the complainants, and for that purpose alone. And it is not competent, after the original deposition of the witness has been closed and put in evidence, and after the respondents' answering evidence

has been closed, and after the complainants' rebutting evidence has been closed, for the complainants now to attempt to re-open all those matters by cross-examining this witness upon things entirely outside of his examination-in-chief to-day; and if they persist in the attempt respondents' counsel will simply not allow it to go on, but will direct the witness not to answer the questions.]

A. I was.

Cross-Q. 11. And during that same period of time you were acquainted, were you not, with a considerable number of persons living at or near Eberly's Mills?

[*Respondents' counsel objects to the question for the reasons above stated, and directs the witness not to answer the question. He proposes to confin the cross-examination to matters that have some relevancy to the examination-in-chief. If the complainants' counsel has any cross-examination to make relevant to the matter inquired of in the examination-in-chief let him proceed to make it; otherwise let the deposition be closed. And if the complainants think they have any right to any such cross-examination as is here attempted, let them get an order of Court directing it and the witness will be again produced for that purpose.*

Complainants' counsel, being satisfied that he is within his strict rights, requests the examiner to read the question to the witness and to take the witness' answer.

Witness remains silent.

Respondents' counsel instructs the examiner to record the witness' answer, as follows:

"*Under the instruction of respondents' counsel, I decline to answer the question.*"

Respondents' counsel further calls upon complainants' counsel to proceed with a legitimate cross-examination, if he has one to make.

Complainants' counsel gives notice of a motion to strike out the deposition of this witness, in view of the position taken by defendants' counsel, and continues the cross-examination, de bene esse.]

Cross-Q. 12. When your father moved to Shiremanstown, in 1873, you went there to live with him. Is that the case?

[*Same objection.*]

A. Yes, sir.

Cross-Q. 13. And have you been living in Shiremanstown ever since?

[*Same objection.*]

A. I have, excepting part of 1878.

Cross-Q. 14. How far is Shiremanstown from Eberly's Mills?

A. About two miles.

[NOTE.—The receipt produced by Mr. Drawbaugh, and copied into question 2, is the same paper which was shown to the witness, identified by him in his answer, and put in evidence as "Exhibit Wilson Miller Receipt." A photo-lithographic *fac-simile* of said paper appears on page 362, Complainants' Book of Exhibits.]

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 27th day of November, 1883.

FRED. M. OTT,
Examiner.

WILSON N. MILLER.

Recess until 2.15 P. M.

A. B. DANNER, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

My age is thirty-six; residence, near West Fairview, Cumberland county, Pennsylvania; occupation, laborer.

Q. 1. West Fairview, Cumberland county, is on the Susquehanna river a mile or so above Harrisburg, and on the opposite side of the river, is it not?

A. Yes, sir; it is about two miles above the Harrisburg bridge. I live something nearer the bridge than that.

Q. 2. Did you ever live at Eberly's Mills or Milltown, Cumberland county, Pa?

A. Yes, sir; I did.

Q. 3. When?

A. I lived there in the year 1873—spring of 1873 I moved there.

Q. 4. Who owned the house that you lived in there?

A. George Leonard.

Q. 5. If you have any account-book in which you kept your account with Mr. Leonard while you lived in Milltown, will you please produce it and point out your account with Mr. Leonard?

A. Yes, sir; here it is. The account with Mr. Leonard begins on page thirty-six. It is the entire account. The balance of the account against me was paid after I left. It don't show in the account that it was paid.

[*By consent, the following copy of the account is put in evidence as Exhibit Danner Account, the original to be produced when called for:*

"36.

1873 George Leonard	Dr.	Cr.
Apr 1 To 1 days work	1.00	
" 5 To 1 " and found board	1.25	
" 7 To 1-8 bbl. Flour		1.20
" 8 To cash for coal		1.00
" 11 To 1 days work	1.00	
" 12 To 1-4 "	25	
" 14 To 1 "	1.00	
" 15 To 1 "	1.00	
" 16 To 1-4 "	25	
" 17 To 1-8 bbl Flour		1.20
19 To 1-2 bushel of apples		35
" " To 1-2 bushel of Potatoes		25
" 21 to 1-2 days work	50	
" 22 to 1-2 days work	50	
" 22 to 1-2 days work in water	75	
" " To cash for coal		1.08
" " To cash for Halling		25
" 23 To cash recd		1.17
" 25 To 1-4 bbl flour		2.37
" " To 1-2 bushel potatoes		25
" " to 1-2 Bushel of apples		25
May 1 One months rent due		3.50
June 1 One months rent due		3.50
July 1 One months rent due		3.50
" 23 One days work	1.50	
" 24 One days work	1.50	
" 25 One days work	1.50	
" 30 One days work	1.00	
Aug 1 One 3-4 "	75	
" 7 One days work	1.25	
" 8 One 1-2 "	50	
" " one 1-16 of flour		50
	17.43	11.55
4 months rent due to Aug 1		14.00
2 months rent due to November 1st		7.00
	17.43	32.55
		17.43
		15.12"]

Q. 6. At what time in the spring of 1873 did you move to Eberly's Mills?

A. It was some time in March—from the middle to the last some time,

I think—I don't recollect the exact time. I didn't open my account with Leonard till the month of April, although I had been there a while before that—from some time in March.

Q. 7. Do you remember what time you moved away from there?

A. I don't remember the exact time; it was some time in October; some where about the middle of October.

Q. 8. This account commences April 1, 1873, and contains a large number of entries in the month of April; and then on May 1 is an entry, "one month's rent due." What month's rent was that—April or May?

A. That was the month of April.

Q. 9. Your rent was not then paid in advance?

A. I was to pay the rent at the end of the month, as it came due.

Q. 10. The last two entries in the Leonard account are as follows: "Four months' rent due to Aug. 1, $14.00." "Two months' rent due to November 1, $7.00." From August 1 to November 1 is three months. Will you explain the last entry about two months' rent being due to November 1?

A. Yes; that is a mistake of mine; it should have been October. It is all correct only the name of the month.

Q. 11. By the account it would seem that you did considerable work for Mr. Leonard during that spring and summer, and that the last work you did for him was on the 8th day of August, 1873. I judge from that that you must have continued to live at Milltown for at least a couple of months after you ceased to work for Mr. Leonard. How is that?

A. After I stopped work for Leonard I went to work for George Oyster, at Oyster's Point, Cumberland county, about two miles from Eberly's Mills, between Shiremanstown and Camp Hill, on the pike. I couldn't get the house when I began to work at Oyster's Point. I had rented one there from Mr. Oyster, but it wasn't empty; and so I walked from Eberly's Mills to Oyster Point to my work until the house was empty—some time in October.

Q. 12. I notice in this book that the next account after Mr. Leonard's is an account with George Oyster, commencing January 12, 1874; where was your account with Mr. Oyster, from August 8, 1873, to January 12, 1874, kept?

A. I kept that in a common day book in my pocket at that time.

Q. 13. I notice in the account with Mr. Leonard an item dated April 22, 1873, "to half a day's work in the water;" what does that mean?

A. I cleared out the tail-race. He had timbers over it and they fell in, and I cleaned out the rubbish.

Q. 14. State whether you ever did or did not live at Milltown in any other year than the year 1873, and in that portion of the year to which you have already testified.

A. No, sir; I did not live there at any other time.

Q. 15. Do you remember whether there was or was not a heavy freshet in the Yellowbreeches creek while you lived at Eberly's Mills in 1873?

A. Yes, sir; there was.

Q. 16. In what month did that freshet occur?

A. In August.

Q. 17. Was there anything connected with that freshet or heavy rain that impressed itself upon your memory? If so, what?

A. It was that the heavy rain flooded the eye or mouth of our lime-kiln and put the fire out. It was the kiln I worked at, at George Oyster's, at Oyster's Point, and was shortly after I began to work for him there.

Q. 18. Do you remember whether you were or were not down at or near Etter & Shanklin's mill at any time while you lived at Milltown in 1873?

A. I was, at different times.

Q. 19. Were any of those times after the great freshet of August, 1873, which you have referred to?

A. There was one time, at least, I was there after that.

Q. 20. Do you remember on what day of the week that one time was, and what you were down there for at that time?

A. It was on Sunday; I went down to look at some young pups at Ditlow's.

Q. 21. Did anybody go down with you; if so, who?

A. George Drawbaugh went with me.

Q. 22. Anybody else.

A. No one else went with me. There were other ones there. I don't remember who they were exactly.

Q. 23. Will you tell us whether or not, on that Sunday, your attention was directed to the foot-bridge at Etter & Shanklin's mill; and if so, state, so far as you remember, what the condition of that foot-bridge was at that time?

A. I saw part of the foot-bridge at that time hanging to the Cum-

berland side of the creek; the balance of the bridge had been swept away by the high water.

Q. 24. What kind of weather was it that Sunday—warm or cold?

A. It was very warm that Sunday.

Q. 25. Have you any idea how long that was after the August flood?

A. I don't remember whether it was the first or second Sunday after it.

Q. 26. While you lived at Milltown in 1873, did you, or did you not, hear Daniel Drawbaugh's talking-machine invention spoken of in the community there?

[*Objected to as not rebuttal, as leading, and as inquiring for hearsay.*]

A. I heard it spoken of frequently.

Q. 27. Please tell us, also, whether you ever had or had not heard it spoken of before you moved to Milltown.

[*Same objection.*]

A. I heard of it before.

Cross-examined, de bene esse, by Mr. Howson:

Cross-Q. 28. For whom are you working now?

A. I am working for Mr. Haldeman now.

Cross-Q. 29. How long have you lived at West Fairview, and where did you live before moving there?

A. I have lived in and about West Fairview for about five years; I lived at Oyster's Point before moving to West Fairvew.

Cross-Q. 30. Were you living at Oyster's Point continually from 1873 to 1878?

A. Yes, sir.

Cross-Q. 31. And Oyster's Point is how far from Eberly's Mills?

A. About two miles, I suppose.

Cross-Q. 32. To whom, recently, and before to-day, have you mentioned your visit to Ditlow's, as to which you have testified in chief?

A. I don't know as I have said anything particularly to any one about it until now.

Cross-Q. 33. Do you wish us to understand that before coming here to testify you had not mentioned the matter to any one?

A. Nothing in particular; I may have talked of the subject before more or less; I don't remember just in particular.

Cross-Q. 34. Can't you give us the name of any person or persons to whom you know you have recently mentioned the matter?

A. George Drawbaugh is the only man I have talked to on the subject.

Cross-Q. 35. When, and where, and how often, if more than once?

A. The only talk of any importance was this summer, on the showgrounds, here in Harrisburg.

Cross-Q. 36. Have you met him since that; and if so, when and where?

A. I haven't saw him since.

Cross-Q. 37. Is George Drawbaugh the only person with whom you have had any talk on the subject?

A. I think he is.

Cross-Q. 38. Who else was at Ditlow's when you and George Drawbaugh went to see the pups?

A. I don't remember exactly who they were.

Cross-Q. 39. You have said positively that there were a number of persons there; mention any of them whom you do remember.

[*Objected to on the ground that the witness has twice stated that he doesn't remember.*]

A. I don't remember positively any of those who were present, except George Drawbaugh. The balance I may be wrong in their names. I don't remember.

Cross-Q. 40. You have told us that during the year 1873 you had several occasions to go to Etter & Shanklin's mill; when and on what other occasions than that visit to Ditlow's?

A. I was to Ditlow's, by way of Etter & Shanklin's mill, in the fore part of the summer and spring occasionally.

Cross-Q. 41. Name any particular errand that you recall having upon any of those visits.

A. No particular errand—only for talk and pastime.

Cross-Q. 42. Who, if you know, was the miller at Etter & Shanklin's mill when you went down there in 1873, or when you were down there viewing the bridge?

A. I don't know who was miller at that time; I don't remember just who it was.

Cross-Q. 43. How long did you work at Oyster's lime-kiln?

A. About five years—near that.

Cross-Q. 44. During that time didn't rain interfere with the operations of the kiln more than once?

A. It never caught us in the position to do us the damage it did that time.

Cross-Q. 45. Who was it directed your attention to the condition of the Etter & Shanklin bridge when you were down at Ditlow's to see the pups?

A. No one; I looked for myself.

Cross-Q. 46. How near the bridge were you?

A. I was within probably a hundred feet of it.

Cross-Q. 47. Standing where; and who was with you?

A. Standing on the hill with the rest of the party.

Cross-Q. 48. On the Ditlow place or outside of it?

A. Outside of the place, between the public road and the creek.

Cross-Q. 49. Above the mill or below it?

A. Below it.

Cross-Q. 50. Did you visit the Ditlow's during the years 1874, 1875, 1876, and 1877—all, or any of those years?

A. No, sir.

Cross-Q. 51. Did you visit them after August, 1873?

A. I don't remember as I did after August.

Cross-Q. 52. Tell us the time, if you can, of any of your 1873 visits there besides the one which you think was in August?

A. I can't give any time; only they were Sundays; that is all I remember.

Cross-Q. 53. Were you at or near the Etter and Shanklin mill any time after August, 1873?

A. I was there a couple of time since.

Cross-Q. 54. How far is Oyster's Point from that mill?

A. About two miles, as near as I can guess without measuring.

Cross-Q. 55. And living for five years or more about two miles from that mill, you wish us to understand that you have been there twice only since August, 1873. Is that it?

A. Yes, sir; I didn't have much business in that direction.

Cross-Q. 56. When were these two occasions when you were there?

A. Some time between 1873 and 1880; I can't tell.

Cross-Q. 57. Have you in your possession the common day-book in which you say your accounts with Mr. Oyster were kept up to January 12, 1874?

A. No, sir; I have not.

Cross-Q. 58. What has become of it, if you know?

A. I don't know; it has been destroyed or burnt; I don't know.

Cross-Q. 59. What, if any, member of the Ditlow family did you see the afternoon that you went down to see the pups?

A. I can't say positively their first names; I don't remember.

Cross-Q. 60. How many of them did you see?

A. I can't tell.

Cross-Q. 61. Where did you go to from the Ditlows that day?

A. I went home.

Cross-Q. 62. What time of day was it that you went there?

A. Between eight o'clock and eleven, in the morning, I suppose; I can't tell exactly.

Cross-Q. 63. How long were you there?

A. I may have been there two hours.

Cross-Q. 64. What did you do besides examining pups?

A. I took a look at the foot-bridge, and went home.

Cross-Q. 65. Who else beside the Ditlows did you know in that vicinity at that time?

A. I knew the farmers in there; that is about all.

Cross-Q. 66. Name them, or any of them, that you knew there at that time.

A. Mr. Hart, Mr. Mumper, Mr. Free, Mr. Zimmerman, Mr. Sheeley; that is about all around that part of the place, close.

Cross-Q. 67. Do you mean to say, as of your recollection, that all these parties were living at or near the Etter & Shanklin bridge in the year 1873?

A. They were, as near as I remember.

Cross-Q. 68. What was Mr. Free's first name, if you recollect?

A. John.

Cross-Q. 69. Same question as to Mr. Zimmerman.

A. I don't know his first name.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 27th day of November, 1883.

FRED. M. OTT,
Examiner.

A. B. DANNER.

JOHN BLAIR, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

My age is fifty-two; residence, New Fairview, Cumberland county, Pa.; occupation, puddler.

Q. 1. How long have you lived at West Fairview?

A. It will be eleven years this coming spring; I moved there April 3, 1873.

Q. 2. Where did you live last before you moved to West Fairview?

A. At Slate Hill, Lower Allen township, Cumberland county.

Q. 3. How far is Slate Hill from Eberly's Mills, or Milltown?

A. They call it two miles and a half.

Q. 4. How much of a settlement was Slate Hill when you lived there?

A. There were some seven houses there, a blacksmith-shop, and a wagonmaker's-shop.

Q. 5. How long did you live at Slate Hill?

A. Four years continuously.

Q. 6. Where did you live last before you moved to Slate Hill?

A. I lived on Mr. Merkle's farm, on the State road, back of Shiremanstown, and about three miles from Milltown.

Q. 7. How long did you live there?

A. I lived three years there—two years in one house and one year in another, on the same farm.

Q. 8. Then, if I understand you correctly, you lived from 1866 to 1869 on the Merkle farm; from 1869 to 1873 at Slate Hill, and from 1873 to the present time at West Fairview, on the banks of the Susquehanna, a mile or two above Harrisburg, on the opposite side of the river; is my understanding correct?

A. Yes, sir.

Q. 9. Did you ever hear of Mr. Daniel Drawbaugh's talking-machine invention?

[*Objected to as not rebuttal, and as inquiring for hearsay.*]

A. Yes, sir.

Q. 10. Where were you living when you first heard of it?

A. On the State road, on the Merkle farm.

Q. 11. Whom did you hear speaking of it while you lived at the Merkle farm?

[*Objected to as incompetent.*]

A. Mr. Henry S. Rupp.

Q. 12. A witness named Henry S. Rupp was examined on behalf of the complainants last winter in this case, and testified, among other thing, (see pages 1128 to 1160, complainants' printed record,) that he was a nurseryman and florist, and was formerly interested in the manufacture of faucets at Mr. Drawbaugh's shop, at Milltown; is that the man you mean, or was it some other Henry S. Rupp?

A. That is the man.

Q. 13. While you lived at Slate Hill was there any talk there at Slate Hill about Mr. Drawbaugh's talking-machine or not?

[*Objection renewed.*]

A. Yes, sir; there was.

Q. 14. You have been living at West Fairview since April, 1873; have you heard Mr. Drawbaugh's talking-machine spoken of during the time you have lived there or not?

A. Yes, sir; I have heard a good bit of since I have been there.

Q. 15. How far is West Fairview from Milltown?

A. I don't know; I suppose it is about five miles.

Q. 16. Were you ever in Mr. Daniel Drawbaugh's shop since he began to occupy the old building down close to the Yellowbreeches, and which was formerly a clover-mill?

A. No, sir; I wasn't in it.

[*The entire deposition objected to as immaterial and not rebuttal.*]

Cross-examined, de bene esse, by Mr. Howson:

Cross-Q. 17. You have heard quite a good deal of talk about Daniel Drawbaugh's alleged talking-machine and about there being a suit going on about it, within the last two or three years, haven't you?

A. Yes, sir; of late now I have heard a good bit about it, and saw a good bit about it in the paper.

Cross-Q. 18. You say that you are a puddler; in what works are you engaged?

A. Harrisburg Nail Works.

Cross-Q. 19. Those works are at West Fairview, are they?

A. Yes, sir.

Cross-Q. 20. And about how many men are employed there?

A. Indeed, I couldn't say; probably three or four hundred men altogether about the whole works.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 27th day of November, 1883.

FRED. M. OTT,
Examiner.

JOHN BLAIR.

Adjourned until Friday, November 30, 1883, at 2, P. M.

November 30, 1883, 3.30 *P. M.*

Examination resumed.

Present, Mr. Howson for complainants, and Mr. Hill and Mr. Jacobs for respondents.

SAMUEL SNELL, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

My age is fifty-nine; residence, New Market, York county, Pa.; occupation, stone-mason.

Q. 1. How long have you lived at New Market, and when did you move there?

A. I moved there twenty-six years ago, and have lived there ever since.

Q. 2. Do you know Daniel Drawbaugh, of Eberly's Mills? If so, how long have you known him?

A. I have known him for thirty years, I guess; we were boys together.

Q. 3. Tell us whether or not you ever saw his talking-machine; if so, when?

[*Objected to as not in rebuttal.*]

A. I saw a machine that he had in his shop, that he talked through. It was in 1867, but the day or the month I don't know.

Q. 4. Did you see it in his shop or somewhere else?

[*Same objection.*]

A. It reached from the shop to the mill-office; I went into the mill-office and he spoke from his shop, which was about a distance of between forty and sixty feet.

Q. 5. Where was his shop at that time?

[*Same objection.*]

A. Right on the east side of Eberly's grist-mill; only a short distance from the mill—may be ten or twelve feet.

Q. 6. And if I understand you, you listened in the mill-office of Eberly's grist-mill.

[*Same objection, and objected to, also, as leading.*]

A. Yes, sir.

Q. 7. Do you remember whether Mr. Drawbaugh spoke of the machine as a completed invention, or as one that he was working at and trying to complete?

[*Same objection, and also as a leading and improper mode of inquiry.*]

A. One that he was working at.

Q. 8. When you listened at the machine, could you hear any words through it or not?

[*Same objection.*]

A. Yes; I could hear the words pretty distinctly.

Q. 9. What kind of a looking thing was the machine that you listened at?

[*Objected to as not rebuttal.*]

A. It looked something like a small tin can with something like a bladder or drum-head over one end of it—tied on—just a simple kind of a thing; but it had bladder, or drum-head, or something on.

Q. 10. Please look at machine "Exhibit B," now shown you, and tell us how it compares with that machine which you saw, so far as you remember.

[*Same objection, and also because the witness' independent recollection has not been sufficiently exhibited to warrant the question.*

A. It was something of that order, as near as I can recollect. It was something like a small tin can, the size of a cup—the mouth of a cup—this looks very much like it so far as I can recollect.

Q. 11. Please look at the electro-magnet on "Exhibit B," and state whether you have any recollection that there was something like that on the machine that you saw or not.

[*Same objection, and also objected to as leading.*]

A. I have no recollection of that at all; it is too long ago. It might have been, of course, but I don't recollect.

Q. 12. Did you see the machine that Mr. Drawbaugh talked into at that time or not?

[*Same objection.*]

A. No, sir. Oh! I might have seen it, but I have no recollection of it

Q. 13. How happened you to be at Milltown that day? What were you doing?

A. I was walling up the steps of that spring, right by the old mill-house, on the opposite side of the road from the grist-mill. I was putting in the stone steps.

Q. 14. Who employed you to do that job?

A. The citizens of Milltown employed me and paid me. It is used by the whole town almost—that spring.

Q. 15. Do you know who owned the grist-mill at that time?

A. Christian Eberly.

Q. 16. Had you heard anything about Drawbaugh's talking-machine before you saw it, or not?

[*Objected to as leading and calling for hearsay.*]

A. I had heard about it before I saw it.

Q. 17. How had you heard about it?

A. I heard people talk about it there where I was working in Milltown.

Q. 18. How happened you to see it?

A. I finished my job about two o'clock in the afternoon, and then I thought I would walk over and see this machine.

Q. 19. When you went over to see it, did you ask Mr. Drawbaugh to let you see it?

[*Objected to as leading.*]

A. Yes, sir.

Q. 20. And then he showed it to you?

[*Same objection.*]

A. Yes, sir.

Q. 21. Did he tell you how far he could talk with it, or expected to be able to talk with it?

[*Same objection.*]

A. I don't recollect whether he did or did not.

Q. 22. How many times have you ever been in Milltown since that day?

A. I don't recollect of more than once, that I drove through it since I drove through with a horse once.

Q. 23. And didn't you stop that time when you drove through?

A. No, sir.

Q. 24. Then you have never been there to stop since that day when you fixed the spring?

A. No, sir.

Q. 25. When you were there fixing the spring, do you remember the old clover-mill building down on the banks of the Yellowbreeches, at the mouth of Cedar Run, two or three hundred yards below Eberly's grist-mill?

A. Yes, sir.

Q. 26. Was there any business going on in that old building then or not?

A. They were repairing it then for a shop.

Q. 27. What were they going to do in it?

A. I understood they were going to make these molasses-faucets.

[*Answer objected to by Mr. Howson as not evidence.*]

Q. 28. Did you ever hear anything said at New Market about Mr. Drawbaugh's talking-machine?

[*Objected to as incompetent, not rebuttal, and as inquiring for heursay.*]

A. Oh, you would hear people talk about it, of course.

Q. 29. How long ago was it a matter talked about at New Market?

[*Objection continued.*]

A. Oh, I couldn't tell the exact time, but it has been several years ago. It might have been ten years ago for what I know, or more.

Q. 30. Did you ever hear it talked about at New Cumberland?

[*Objections continued.*]

A. I supposed I did; a person could hear it most everywhere where he would be.

Q. 31. Do you remember anything about a great flood in the Yellowbreeches in August, 1873?

[*Objected to as leading.*]

A. Yes, sir; I recollect it.

Q. 32. Do you remember any foot-bridges that were carried away by the flood on the Yellowbreeches?

[*Same objection.*]

A. Yes, sir; only by hearsay; I didn't see the bridge. Only what the neighbors told me—that the Etter & Shanklin foot-bridge was taken away.

[*Answer objected to by Mr. Howson as not evidence.*

Entire deposition objected to by Mr. Howson for the grounds stated, and cross-examination, de bene.]

Cross-Q. 33. How far is New Market from Milltown?

A. About three miles.

Cross-Q. 34. Have you been carrying on the stone-mason business all the while that you have been living at New Market?

A. Yes, sir.

Cross-Q. 35. From whom did you get the order for the work upon the stone steps in Milltown, referred to in your examination-in-chief; that is to say, what person or persons negotiated with you for the job?

A. Eli Good got me to do it, and he collected the money from the citizens who drew their water there, to pay me.

Cross-Q. 36. How long were you at the job?

A. A little over a day and a half.

Cross-Q. 37. Where was the thing which you say looked something like a small tin can, at which you say you listened?

A. It was in Eberly's Mill office, that was built outside of the mill.

Cross-Q. 38. Who was there besides yourself on that occasion, and how long were you there?

A. I can't tell the exact time I was there; I might have been there an hour. There was nobody there but Mr. Drawbaugh and I.

Cross-Q. 39. After finishing your work that day you went right to the mill-office; is that it?

A. To his shop I went first.

Cross-Q. 40. Were you in his shop any length of time?

A. I don't know how long; I might have been in there an hour—there and in the mill-office; from there I went to the mill-office.

Cross-Q. 41. In which of the two places were you the longest time that day?

A. In the shop.

Cross-Q. 42. Who was running the mill at that time?

A. I think it was a Scotchman by the name of—I can't remember his name, but he was a Scotchman, anyhow.

Cross-Q. 43. If I understand you, the mill-office was in one building and Mr. Drawbaugh's shop in another; is that it?

A. Yes, sir.

Cross-Q. 44. You have stated that you do not recollect seeing the thing into which Mr. Drawbaugh talked that day; and you have also told us that you were longer in the shop than you were in the mill-office; can you tell us how long you were in the latter place, and how long you were listening at the tin can?

A. Oh, I don't suppose that I was more than ten minutes in the mill-office; I don't think so.

Cross-Q. 45. Where did you go to when you left the mill-office that day?

A. Into the shop.

Cross-Q. 46. Did you stay in the shop any length of time after going there from the mill-office?

A. I stayed some time; yes, sir. He showed me some of his other inventions that he had made; that took some time; I suppose I was in the mill-office and shop an hour.

Cross-Q. 47. What other of his inventions did he show you on that occasion?

A. He showed me, for one thing, a nail-cutter—without having a man to turn the plate.

Cross-Q. 48. What else?

A. He showed me a machine to cut tacks and a molasses-faucet.

Cross-Q. 49. How long have you known that there was a suit going on about this talking-machine?

A. Indeed, I can't tell how long I have heard of it; several years, I guess.

Cross-Q. 50. Who first told you about it, if you recollect?

A. Indeed, I can't recollect.

Cross-Q. 51. Mention anybody whom you recollect having any talk with about it during the last two or three years.

[*Objected to as immaterial and irrelevant to the examination-in-chief.*]

A. I have heard a man by the name of John Fleisher talk about it this summer.

Cross-Q. 52. Is that the only person you recollect having any conversation with on the subject during the last two or three years?

A. Oh, no; I have heard Brubaker, of New Cumberland, talk about it, and others besides.

Cross-Q. 53. Have you business in New Cumberland?

A. I work there sometimes. I did the stone work at a house for Mr. Brubaker this summer.

Cross-Q. 54. When did Mr. Drawbaugh, or anybody for him, first ask you what, if anything, you knew about the talking-machine?

A. There was nobody asked me about it; but I remarked about it when I was working up at Cumberland here this summer, that I had seen that machine long ago working; and there was a man in the party told him, I suppose, or he would never have found it out, I guess.

Cross-Q. 55. I suppose this remark of yours was in consequence of talk going on at the time about the talking-machine and this suit; was it?

A. Yes, sir.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 30th day of November, 1883.

FRED. M. OTT,
Examiner.

SAMUEL SNELL.

Adjourned until December 1, 1883.

DECEMBER 1, 1883, 10 A. M.

Examination resumed pursuant to adjournment.

Present, same counsel.

JAMES DAVIS, *being produced, affirmed, and examined, saith:*

Examined by Mr. Hill:

My age is sixty-three; residence, New Market, York county, Penna.; occupation, shoe-mending now; I have a shop at New Market.

Q. 1. How long have you lived at New Market?

A. I have lived there till spring twelve years.

Q. 2. Do you mean that next spring it will be twelve years since you moved there?

A. Yes; this spring coming it will be twelve years.

Q. 3. Where did you live last before you moved to New arket and how long?

A. I lived in White Hill one year before I moved to New Market.

Q. 4. Did you move from White Hill to New Market?

A. Yes, sir.

Q. 5. Where did you live last before you moved to White Hill?

A. In Adams county; it was about three miles to the left of Petersburg.

Q. 6. How long did you live in Adams county?

A. Three years.

Q. 7. Where did you live last before you moved to Adams county?

A. I lived on Frederick Sheeley's farm, at Cedar run.

Q. 8. How far is that farm from Milltown?

A. We call it about a mile and a half down there.

Q. 9. How long did you live on Fred. Sheeley's farm?

A. Twelve years.

Q. 10. What business did you follow while you lived on Fred Sheeley's farm?

A. I farmed there for Sheeley.

Q. 11. Were you ever in Mr. Daniel Drawbaugh's shop at Milltown; and if so, how many times were you ever there?

A. I was never more than once there.

Q. 12. When was that once?

A. It was in 1867 as near as I can tell; it was after harvest sometime—towards fall.

Q. 13. Where were you living at that time?

A. I was living up on Sheeley's farm.

Q. 14. What were you down at Milltown for that day?

A. I went down to the grist-mill to fetch flour and chop-stuff from there.

Q. 15. What building was Daniel Drawbaugh's shop in at that time?

A. It was down in what was called the old clover-mill, below Milltown.

Q. 16. Do you remember whether it was still warm weather when you were down there that time or not?

[*Objected to as leading.*]

A. I can't remember how that was, but I remember that it was some time after harvest, towards seeding-time, but about the weather I can't mind—whether it was warm or not.

Q. 17. In what month does seeding-time come in that part of the country?

A. We generally begin—when I farmed there I generally began—about the 12th of September—from that on until we got done.

Q. 18. How happened you to go down to Drawbaugh's shop when you were down there at the grist-mill that day?

A. I came there to the mill; and they were talking then in the mill—I can't mind who any more—that Dan was working on a talking-machine down in the old clover-mill; and I told the hired man there—he is dead now; me and him used to work together—that we would go along down to the old clover-mill and see the talking-machine.

Q. 19. What is the name of that hired man that you refer to?

A. John Keller.

Q. 20. Do you know where he was hired at that time?

A. He was hired right on the hill there with one Daniel Hart.

Q. 21. Did Keller go down to Drawbaugh's shop with you?

A. Yes, sir.

Q. 22. What did you and Keller find Daniel Drawbaugh working at when you got down to his shop that day?

[*Objected to as not rebuttal.*]

A. When I came into the shop—I was well acquainted with Dan Drawbaugh—and I said: "Dan, they tell me up here at Milltown that you are working at a talking-machine;" and he said: "Yes; I am working at it now."

Q. 23. Did you see the machine that he was working on?

[*Objected to as not rebuttal, and as leading.*]

A. I seen the machine that he was working on, and he told me—but you know I don't know nothing about it—he told me it was a machine to talk.

[*Answer objected to by Mr. Howson as not evidence.*]

Q. 24. While you were living at White Hill, did you hear anything said around in the community about Daniel Drawbaugh's talking-machine?

[*Objected to as leading, not rebuttal, and calling for hearsay.*]

A. Yes, sir; I heard a good many people talk about it—I can't just remember who; but I heard a good many talking about it while I lived there that year—about him talking through it down there at Milltown.

Q. 25. While you have been living at New Market, have you ever heard anything said about it down there at New Market, or not?

[*Same objection.*]

A. Oh, yes, a good bit; they come in there—I have a shop where I mend shoes—and they come in there and talk about it every while.

Q. 26. How soon after you moved to New Market did you begin to hear the people there talk about it?

[*Same objection.*]

A. I didn't live long there at all till they told me—I never went to see it—but they told me that they was talking through it from the clover-mill up to the big mill.

[*Answer objected to by Mr. Howson as not evidence.*]

[*Deposition objected to as incompetent and not rebuttal, and cross-examination, de bene esse, by Mr. Howson.*]

Cross-Q. 27. In what county is Fred. Sheeley's farm, and who occupies it, if you know, now?

A. His son bought it from his father and lives on it now; it is in Cumberland county.

Cross-Q. 28. When did the John Keller you have referred to die?

A. I can't tell you when he died. He moved to the West, but how many years ago I can't tell; he died in the West.

Cross-Q. 29. Where were you living when he went to the West.

A. I can't tell you whether I was living in Adams county, or where I was living when he went to the West. He was a single man, you know, and I didn't go to see him much after that time we were down there together. He went out West with another man who came in from there, but where I was living at the time I can't tell.

Examination taken, reduced to writing, and by the witness affirmed and subscribed to before me, this 1st day of December, 1883.

FRED. M. OTT,
Examiner.

JAMES DAVIS.

SOLOMON ZIMMERMAN, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

My age is fifty-one; residence, Lower Allen township, Cumberland county, Pennsylvania; at the residence where I was born there I live yet; my occupation is farming.

Q. 1. How near to the Yellowbreeches creek do you live?

A. In a straight line, say about a hundred rods.

Q. 2. Do you live above or below Milltown?

A. About a mile below Milltown by the way you have to go.

Q. 3. How far below Etter & Shanklin's mill do you live?

A. In a straight line it is about half way between my house and Milltown.

Q. 4. What road do you generally go in traveling from your place to Milltown?

A. We generally used to cross at the head of Henry Zimmerman's meadow, and cross again at the foot-bridge near Etter & Shanklin's mill. The creek makes a bend in the shape of a horse-shoe, and that is why we had to cross the creek twice to go in the straightest line to Milltown. Of late years we have been more in the habit of following the road on the Cumberland side of the creek, without crossing the creek at all.

Q. 5. Do you remember anything about a very high water in the creek quite a number of years ago along in the latter part of the summer?

A. Yes, sir.

Q. 6. Do you remember anything that you were doing at that time? If so, what?

A. I was husking corn to dry—sweet corn; we call it roasting ears—when my brother came down and said that the foot-bridge was gone.

[*Answer objected to by Mr. Howson as not evidence.*]

Q. 7. In what month of the year is the sweet corn ready to be husked for roasting ears in your section of the country, as a general rule?

A. To make it a standard, about the middle of August.

Q. 8. What was the name of your brother who had that conversation with you that day?

A. Christian Zimmerman, my brother who lives with me. We own the farm and everything that we have in partnership.

Q. 9. Did he tell you how high the water had risen in the creek?

[*Objected to as incompetent.*]

A. He didn't mention the feet; but he said it was very high.

Q. 10. Did you have any occasion to go to Milltown soon after that? If so, how soon?

A. I am not positive whether it was the first or second day; but I went to the blacksmith-shop with a plowshare and the creek was then about six feet above low water mark yet, and the foot-bridge was gone;

and there was a piece hanging to the Cumberland side yet, to a tree, with a chain.

Q. 11. Do you mean that was the first or second day after you had the conversation with your brother?

A. Yes, sir.

Q. 12. What foot-bridge was gone?

A. It was—I can hardly tell you what we call it—there at Etter & Shanklin's mill at the crossing.

Q. 13. Did you ever burn any lime?

A. Yes, sir.

Q. 14. When?

A. It was the same year.

Q. 15. Do you mean the same year that the foot-bridge at Etter & Shanklin's mill was carried away by the flood that you have referred to?

A. Yes, sir.

Q. 16. Where was your lime-kiln?

A. Along the Yellowbreeches, about fifty yards from the creek—that is, from low water mark.

Q. 17. Do you remember having any trouble with your lime-kiln that year; if so, what trouble, and what was the cause of it?

A. I remember that the creek had been out in the stone pile and dirtied it up—the stone—very much, and that the logs at the mouth of the kiln caught fire, and that Mr. Spangler, who lived across the creek near our place, right opposite to the kiln, came and called us in the night and told us that our kiln was on fire.

Q. 18. What is Mr. Spangler's name?

A. David.

Q. 19. Whose place did he live on?

A. Mr. Studebaker owned the place then; Abraham Bowman owns it now.

Q. 20. When Mr. Spangler called you up in the night did you get up and go down to the kiln?

A. Yes, sir.

Q. 21. Did you find the logs afire as he had stated?

A. Yes, sir; we had considerable trouble in getting it out.

Q. 22. How many times did such an accident as that ever happen to your kiln while you burnt lime?

A. It never happened before nor since, but it caught fire three times that fall for us.

Q. 23. Do you remember whom your family consisted of at the time that fire took place?

A. Myself and Isaac Zimmerman, my brother; and Annie Weaver kept house, and the hired girl I ain't positive of, but think it was Ellen Schell.

Cross-examined, de bene esse, by Mr. Howson:

Cross-Q. 24. During how long a time did you burn lime?

A. From the time we commenced till we were done was about three weeks that we were at it.

Cross-Q. 25. Were those three weeks the only time you ever burned any lime?

A. The only time in that year.

Cross-Q. 26. Then if I understand you, you have burned lime in different years?

A. Yes, sir.

Cross-Q. 27. You have referred to going to Milltown to get some repairs done to a plowshare; what repairs were they?

A. Getting a point put on the share and the share sharpened.

Cross-Q. 28. Is Milltown the nearest place for you to go to to have such repairs done?

A. Yes, sir.

Cross-Q. 29. About how frequently on the average is it necessary to have a plowshare so sharpened when in ordinary use upon your farm?

A. If it is dry weather we have to go very often every other day.

Cross-Q. 30. Have you had any talk recently with anyone about the flood in the Yellowbreeches, and the carrying away of the Etter & Shanklin foot-bridge? If yes, with whom?

A. I don't know as I have, just particularly, more than what the neighbors have been talking in the neighborhood there round about.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 1st day of December, 1883.

FRED. M. OTT,
Examiner.

SOLOMON ZIMMERMAN.

Recess until 2 P. M.

DAVID SPANGLER, *being produced, sworn and examined, saith:*

Examined by Mr. Hill:

My age is sixty-three; residence, near Shiremanstown, Cumberland county, Pennsylvania; occupation, farming a little and attending market.

Q. 1. How long have you lived there where you now live?

A. Eight years till next spring.

Q. 2. Where did you live last before you moved where you now live?

A. On John Mosser's farm, not far from there.

Q. 3. How long did you live on John Mosser's farm?

A. One year.

Q. 4. Where did you live last before you moved on to the Mosser farm?

A. On the Studebaker farm.

Q. 5. How long did you live on the Studebaker farm?

A. Two years.

Q. 6. Where is the Studebaker farm?

A. It is right near where this bridge was taken that was spoke of; the buildings are close to the bridge.

Q. 7. How far is that bridge that you spoke of from Etter & Shanklin's mill?

A. It is close there—about a hundred yards below the mill—just below the tail-race.

Q. 8. How many times was that bridge carried away while you lived there on the Studebaker farm?

A. It was carried away once that I recollect, and once one end of it was carried away—the York county end. That was in the summer after harvest.

Q. 9. The York county end was carried away once in the summer, and the whole bridge was carried away at another time. When was this last-mentioned time when the whole bridge was carried away?

A. It is February—the last February before I moved away there. I know it was not as late as March.

Q. 10. In what part of the summer was it that the York county end was carried away?

A. In the afterpart of the summer—after harvest.

Q. 11. Do you remember anything about the Zimmerman's having a lime-kiln down along the Yellowbreeches while you lived there?

A. Yes, sir; they had one just forenent me on the other side.

Q. 12. Do you remember anything that happened to that lime-kiln, that you had anything to do with, while you lived there?

A. Well, this much; they had set the lime-kiln afire burning lime; there was logs around the outside and they caught fire, and I seen from my place that the logs was afire; and I went over and told them that their lime-kiln was afire; that was in the evening—after night.

Q. 13. What evening?

A. To the best of my memory it was on Sunday evening.

Cross-examined by Mr. Howson:

Cross-Q. 14. How far is the Mosser farm from the Etter & Shanklin bridge?

A. It is between a mile and two miles—two short miles you might call it, but I don't think it would reach the two miles.

Cross-Q. 15. In your answer to interrogatory 6, "Where is the Studebaker farm," you say: "It is right near where the bridge was taken that was spoken of;" who had been speaking to you about this bridge that was taken before your examination here?

A. Over here, in Mr. Jacobs' office, we were talking about it.

Cross-Q. 16. Was that talk in Mr. Jacobs' office the first that you had had lately, about the taking away of that bridge, with any one?

A. Yes, that was of any account—that I was questioned about it. They questioned me there about the taking away of the bridge, and I told them the same that I did here—what I knew about it; of course, I wasn't on oath there.

Cross-Q. 17. When was that that you were questioned?

A. To-day, when I came here.

Cross-Q. 18. In your answer to question nine, you say that the bridge was taken away once that you recollect of, and that once one end of it was carried away—the York county end. Just how much of the bridge was carried away on this last-mentioned occasion?

A. The end that was fixed to run up to go across the bridge—just the end on the land.

Cross-Q. 19. If I understand your last answer correctly, what was washed away at this time was simply the inclined planking that ran from the bank up on to the bridge.

A. Yes, sir; that is according to my memory. Of course, there is some that recollects more about it, but that is all my recollection about it.

Cross-Q. 20. According to your recollection, then, the main body of

the bridge was not washed away, but only this inclined planking leading up to the flat portion of the walk over the bridge?

[*Objected to as mere repetition.*]

A. Yes, that is right according to my memory.

Cross-Q. 21. What years were they, that you were living on the Studebaker farm?

A. You had the time from this time on to the time that I lived there; those two years would be in 1873 and 1874, the way I counted it.

Cross-Q. 22. In what year, and at what time of the year, did you move away from there?

A. I moved in the spring; I don't recollect the year—what date it was; it will show for itself. Of course, it would make it in 1875, in April.

Re-direct by Mr. Hill:

Q. Q. 23. You lived there from April, 1873, to 1875?

A. Yes; two years. After New Year's it would have been 1875, to the best of my memory.

Examination taken, reduced to writing, and by the witness affirmed and subscribed to before me, this 1st day of December, 1883.

FRED. M. OTT,
Examiner.

DAVID SPANGLER.

Adjourned until Monday, December 3, at 10 A. M.

Monday, December 3, 1883, 10.30 *A. M.*

Examination resumed. Present, Mr. Howson for complainants, and Mr. Jacobs for respondents.

JOHN SIMMONS, *being produced, affirmed, and examined, saith:*

Examined by Mr. Jacobs:

My age is thirty-seven; residence, in Hampden township, Cumberland county, Pennsylvania; occupation, farmer.

Q. 1. Did you ever live in York county?

A. Yes, sir.

Q. 2. When did you move from York county to Cumberland county?

A. In 1875.

Q. 3. Whereabouts in Cumberland county did you then go to live?

A. In Johnny Mosser's house, right below Slate Hill.

Q. 4. Did you ever see any talking-machines at Daniel Drawbaugh's shop at Eberly's Mills?

[*Objected to as leading and as not rebuttal.*]

A. Yes, sir.

Q. 5. Where were you living at the time when you saw them?

[*Objected to as not rebuttal, this objection to apply to all succeeding questions on the same line of inquiry.*]

A. In Johnny Mosser's house.

Q. 6. How long did you live there?

A. One year.

Q. 7. What time of the year was it when you saw the talking-machines at Drawbaugh's shop?

A. It was in the fall, about November some time—after corn-husking—that I was down.

Q. 8. Was anybody with you?

A. Jake Evans was with me.

Q. 9. A witness by the name of Jacob Evans has testified in this case on behalf of the complainants, (see Complainants' printed record, page 974,) that his age (at the time of testifying) was thirty-one; residence, Eichinger's mill, Fishing Creek valley, York county, Penna., and occupation, miller; and that he moved to Eberly's Mills to work in the mill there in September, 1875; is that the Jake Evans to whom you refer?

A. Yes, sir.

Q. 10. Was he with you in Drawbaugh's shop at the time that you saw the talking-machines in the fall of 1875?

[*Objected to as leading.*]

A. Yes, sir.

Q. 11. Did you hear anyone talk through them at that time? If so, whom?

[*Same objection.*]

A. I heard Daniel Drawbaugh talking through them.

Q. 12. Did you or not understand the words he spoke through them?

[*Same objection.*]

A. That I couldn't recollect no more—what he said through them—but I heard him talk through them.

Q. 13. You probably did not understand my question; it is, whether or not, at the time you listened, you understood the words he spoke through the machines?

[*Same objection, and also objected to as incompetent in view of the last answer.*]

A. I guess I did, but I can't recollect of the words just now at the present.

Q. 14. Where was Daniel Drawbaugh, and where were you, at the time the talking was going on through the machines?

[*Objected to as assuming.*]

A. He was in one room and we were out in the other room.

Q. 15. By "we" whom do you mean?

A. Jacob Evans and myself—both of us together. We went down together. I don't recollect if there was anybody else along or not.

Q. 16. Did only one, or both of you, listen whilst Drawbaugh spoke?

A. Both of us; that I can mind of; we both of us laughed when Dan was talking. It made so funny, you know. I can mind that just as well as anything.

Q. 17. Will you look at the exhibits produced before you and pick out, if you can, any of the instruments which you saw at Drawbaugh's shop at the time of the visit of Jacob Evans and yourself?

[*Objected to as leading, no independent recollection by the witness of any machine alleged to have been seen by him having been attempted to be shown.*]

A. There is something I mind of, [indicating "A";] I pick out these two that I recollect of, ["A" and "E,"] I might have seen the others, but these two I mind of.

[*The instruments shown to the witness were Exhibits "A," "B," "C, "D," "E," "F," and "I."*]

Q. 18. State whether or not you had any knowledge of Drawbaugh's talking-machine before you and Jacob Evans visited his shop together in the fall of 1875?

[*Objected to as incompetent and not rebuttal.*]

A. Yes; I heard them talking about it.

Q. 19. How long before that visit did you hear it talked of?

[*Objection continued.*]

A. It might have been in 1874—a year before that anyway, if not more.

Cross-examined, de bene esse, by Mr. Howson:

Cross-Q. 20. How long have you been living in Hampden township?

A. A year next spring.

Cross-Q. 21. Whereabouts in Hampden township is it that you live?

A. Half a mile below Sporting Hill.

Cross-Q. 22. How far from you is Jacob Evans living now?

A. It must be about six miles anyway, over to Fishing Creek—a good six.

Cross-Q. 23. Where did you live before going to Hampden township, and how long?

A. At Milltown; I lived there seven years—four in the town and three a short distance from it.

Cross-Q. 24. Then, if I understand your last answer, from 1876 down to the spring of the present year you were living four of those years at Eberly's Mills and three close by it; is that correct?

A. Yes, sir.

Cross-Q. 25. How long have you known that this suit was going on, and from whom did you first learn it?

A. I heard them talk of it there in Milltown; it has been five or six years ago.

Cross-Q. 26. From what particular person did you first hear about this suit?

A. I heard the people talking about it—all over the country they are talking about it.

Cross-Q. 27. You think you have known about this suit for five or six years; has Mr. Daniel Drawbaugh, within that time, said anything to you about the talking-machine, or asked you anything about it?

A. No, sir; not just in particular he hasn't.

Cross-Q. 28. Well, what, if anything, has he said to you about it in general?

A. Dan never said anything to me about it.

Cross-Q. 29. To whom, if to anyone before to-day, have you mentioned this visit which you think you made to Drawbaugh's shop with Jacob Evans?

A. I haven't told anybody about it, unless they seen me going there; a body can't mind that; but I know I was there; that I am sure of.

Cross-Q. 30. Then you wish us to understand, do you, that until to-day you have not, at any time nor to any person, mentioned that visit?

A. I might have told people, but I don't recollect of it just now; but I was there.

Cross-Q. 31. During, at least, the last two years that you were living at Eberly's Mills, this talking-machine matter and the suit that was going on about it were general subjects of conversation in that neighborhood, were they not?

A. No; not just so much.

Cross-Q. 32. You now think, then, do you, that there wasn't much talk about the suit at Eberly's Mills?

A. Of course they talked about it, but they weren't just all the time talking about it. I wasn't there much—just back and forward at the stores. I never paid much attention to the suit, but I heard about it long enough.

Cross-Q. 33. In your answer to cross-question 25, you tell us that you "heard them talk of the suit there in Milltown; it has been five or six years ago." Who, in Milltown, did you hear talk about the suit?

A. I can't tell you that any more. I heard it talked of, though, and in other places I heard it talked of, too, not only at Milltown.

Cross-Q. 34. Don't you recollect a single person whom you heard talk about it?

A. No, that I don't recollect of—that slips my memory. I heard talk; Dan and me talked of it, too, there in the store and down in the shop. I worked for Chellis there. We were talking about it back and forward, but I never paid any attention to it.

Cross-Q. 35. By "Dan" you mean Daniel Drawbaugh, do you?

A. Yes, sir.

Cross-Q. 36. What store and what shop do you refer to in your answer to cross-interrogatory 34?

A. The store in Milltown, and the machine-shop below Milltown; I worked there for Chellis and for Dan; for three or four years there I done his work for him.

Cross-Q. 37. Whose shop now is that which you refer to as the machine-shop below Milltown?

A. It is Dan's shop, as far as I know.

Cross-Q. 38. Then, if I understand your testimony, you worked for three or four years in Daniel Drawbaugh's shop, below Milltown; is that it?

A. No; not in the shop. I did outside work. I filled up the dam, and did work of that kind.

Cross-Q. 39. Then, for three or four years, you were working for Daniel Drawbaugh, or Mr. Chellis, or for both of them, in the immediate neighborhood of Daniel Drawbaugh's shop; is that correct?

A. Yes, sir; I didn't work steady—just now and then. When they had anything to do outside I worked for them.

Cross-Q. 40. During what three or four years was this? Name the years.

A. 1880, 1881, 1882.

Cross-Q. 41. Do you wish us to understand that it was up to last spring?

A. No; the last year I was down there I didn't work for him; I worked at Bridgeport.

Cross-Q. 42. Who is Mr. Chellis, referred to in some of your answers—who and what is he?

A. I can't understand that.

Cross-Q. 43. I repeat the question and ask you what there is about it that you can't understand.

A. He is a mighty fine man, ain't he? That is what I take him to be. He always treated me right.

Cross-Q. 44. I repeat the question; and if you don't understand the question, I ask you to state what there is about it that you don't understand.

A. I don't know much about him; I think he is a nice man, as far as I know.

Cross-Q. 45. Do you know his first name?

A. No, sir; that I don't.

Cross-Q. 46. Do you know what his business is, and where he carries it on?

A. Yes, sir; I know that; he carries on a 99-cent store here on Third street, Harrisburg.

Cross-Q. 47. Are we to understand that during the three or four years you were working for Mr. Drawbaugh and Mr. Chellis they said nothing to you, nor you to them, about this talking-machine matter or about this suit?

[*Objected to, as the witness has already stated that he and Mr. Drawbaugh had conversations about the suit in the store at Milltown.*]

Complainants' counsel, since the counsel for defendant has thought it

proper and fair to interfere with the cross-examination by calling the witness's attention to a particular portion of his testimony already given, desires to call the attention of the Court particularly to the proceeding, of which this is not the first example; and also calls the attention of the Court to cross-interrogatories 27 *and* 28, *and the witness's answers thereto.*

Counsel for respondents is willing to stand by the propriety and fairness of his course in protesting against counsel for the complainants' putting in the mouth of the witness things which he has not testified to, and calls the attention of the Court to the fact that neither the cross-interrogatories mentioned nor the answers thereto, refer to any conversation between the witness and Daniel Drawbaugh with regard to the suit, but only with regard to witness's knowledge of Drawbaugh's talking-machine.]

A. I never heard Chellis say anything, but I heard Dan talking about it.

Cross-Q. 48. During those three or four years while you were hearing Daniel Drawbaugh talking about this suit and talking-machine, he never asked you what, if anything, you knew about the machine, and you never mentioned to him, nor to anyone connected with him, this visit of yours to his shop with Jacob Evans; is that correct?

[*Same objection.*]

A. Yes, sir; that is correct.

Recess until 2 P. M.

Cross-Q. 49. When and by whom were you notified to come here and testify?

A. On Saturday, by Shank.

Cross-Q. 50. Was that the first time Shank had seen you on the subject?

A. No, sir.

Cross-Q. 51. When before, and where, had he so seen you?

A. About two weeks ago he seen me on this side of Shiremanstown.

Cross-Q. 52. Did he then say to you, or you to him, anything about the talking-machine?

A. Yes; we were talking about it.

Cross-Q. 53. Did you tell him then anything about having been at Drawbaugh's shop and seen talking-machines?

A. Yes; we were talking about it—me and him—and I told him that I had seen the machine.

Cross-Q. 54. Did you tell him when it was, and who was with you?

A. No, sir; I did not; we didn't talk much on the subject.

Cross-Q. 55. Name the different parties for whom you were working during the seven years that you lived at Milltown, or Eberly's Mills.

A. I worked for Samuel M. Hertzler four years—1876 I went there, in the spring, and worked for him four years. The other three years I worked by the day around among the farmers. I had moved out of town then. I worked a good bit for Henry Zimmerman and for Mr. Gilbert —I think Ezra was his first name—Emanuel Zimmerman, Fred. Sheely; that is about all I remember. Those are the four that I worked the most for.

Cross-Q. 56. During the four years from 1876 on, that you worked for Mr. Hertzler, I understand that you were living right in the village of Milltown; is that right?

A. Yes, sir.

Cross-Q. 57. In whose house, and how far is it from Mr. Drawbaugh's shop?

A. I lived in Leonard's house two years; that is about four hundred yards from the shop, as near as I can tell. I lived two years in Hertzler's house; that ain't more than fifty yards from the Leonard house.

Cross-Q. 58. Where was Mr. Jacob Evans living at the time you think you and he visited Mr. Drawbaugh's shop together?

A. He lived at Milltown.

Cross-Q. 59. In what house in Milltown?

A. In George Leonard's house he lived.

Cross-Q. 60. Is that the same Leonard who owned the house in which you were living?

A. Yes, sir; the same man.

Cross-Q. 61. Did you and Mr. Evans go to Mr. Drawbaugh's shop together, or meet each other there; how was that?

A. We went down together.

Cross-Q. 62. How long were you there?

A. That I can't remember—how long it was we were there.

Cross-Q. 63. Did you leave together?

A. That I can't tell you, neither.

Cross-Q. 64. Whom did you see at the shop besides Mr. Drawbaugh?

A. There was men working there, but I couldn't tell you who they were—not just now, at the present time.

Cross-Q. 65. Can you give us any idea how long you were there at that time?

A. No, that I can't; but I know we were there; that I am sure of.

Cross-Q. 66. What day of the week was it, and what time of day?

A. It was in the fall of the year; it must have been November, or somewhere along there. I can't tell you what day of the week, though; I didn't put that down; indeed, I couldn't tell you what time of day it was when we went down; I don't remember.

Cross-Q. 67. In what room of the factory was it that you saw the talking-machines, and how did you get to the room?

A. I went up, and I went in. When I came in there, Dan was working there.

Cross-Q. 68. I repeat my question, and ask you whether that is the best answer you can or will give to it?

A. I went in—there's a stairs goes up, you know—and I went in. There was two rooms in the shop at the time—every two or three years they change it—and the right-hand room, as you go in, is where I seen it.

Cross-Q. 69. Where were the stairs situated that you went up?

A. There was a pair at the gable-end, and one at the side—a short pair. The one at the gable-end was long. I don't recollect which pair I took to go up. You could go up at either pair you wanted to.

Cross-Q. 70. Did you see talking-machines in more than one room of the factory that day?

A. No, sir.

Cross-Q. 71. Did you see any machines that Mr. Drawbaugh talked into?

A. Yes, sir.

Cross-Q. 72. Tell us everything else that you saw that day in the factory besides talking-machines?

A. I seen clocks standing around and one thing and another—I couldn't recollect all—and some was going and some wasn't.

Cross-Q. 73. What sort of clocks were they, large or small; or were there both large and small clocks there?

A. I don't recollect right any more, but there were some there anyway—I can mind of that—and all kinds of stuff.

Cross-Q. 74. Do you remember whether the clocks, or any of them, were in wooden cases?

A. No; that I can't. There were some, I think, in wooden, and some he had hanging up against the wall—such little ones.

Cross-Q. 75. I suppose that before that visit you had heard some talk in Milltown about Dan's clocks?

[*Objected to as irrelevant, immaterial, and not proper cross-examination, as the subject has not been referred to in direct examination.*]

A. Yes, sir.

Cross-Q. 76. Do you recollect any talk that you heard about them? [*Same objection.*]

A. No; not just now I don't.

Cross-Q. 77. I judge from your testimony that upon this visit, about which you have testified, you saw quite a number of these clocks in the shop. Is that so?

A. I couldn't say how many I seen, but there was some there—that I couldn't say.

Cross-Q. 78. How lately have you been in Mr. Drawbaugh's shop?

A. I was in last spring.

Cross-Q. 79. More than once last spring?

A. Yes; and last winter I was in pretty often—every week. I would be back and forward down at the creek, and I would go in there to warm myself still.

Cross-Q. 80. I suppose that while you lived at Milltown, you would be at the shop every now and then, wouldn't you?

A. Yes; I would get down occasionally sometimes.

Cross-Q. 81. Which of the two things which you pointed out here in your direct examination do you think it was that you listened at when you and Mr. Jacob Evans were at Mr. Drawbaugh's shop together, as you think?

[*Objected to as assuming.*]

A. I think this here one [indicating "A."]. Dan went over into the room and talked, and me and Jake laughed. I can remember that as long as I am sitting here in this room. We were sitting at the stove—me and Jake—and laughing at Dan talking.

Cross-Q. 82. Do you remember when it was that Jacob Evans moved away from Eberly's Mills?

A. I think it was in 1880—1879, he moved to York county.

Cross-Q. 83. Was it in the same room or in different rooms that you saw the things which you think were like Exhibits "A" and "E"?

A. In the same room we were in—on the bench they were lying, and Dan showed them to us.

Cross-Q. 84. Both of them lying loose on a bench; or was either of them fastened to anything?

A. He had a kind of a stick he had one of them fastened to—or something; they were lying there on a kind of shelf that he had; and he took them down and got to talking to us about them; and he went into the room, then, and began talking through them. That is all I remember about it any more.

Cross-Q. 85. Which of them was it that was fastened to a kind of a stick?

A. Something like this here, [indicating "E."]

Cross-Q. 86. Were you and Mr. Evans sitting by the stove when you heard the talk?

A. We were there by the stove; I can mind of that. I don't know whether we were sitting down or standing; that I can't remember.

Cross-Q. 87. You were, both of you, standing or sitting there together listening, were you?

A. Yes, sir.

Cross-Q. 88. How far was the stove from the bench, if you recollect?

A. That I can't recollect—how far that was from the bench.

Cross-Q. 89. Far enough, I suppose, to prevent danger of fire from the stove?

A. Yes, sir.

Cross-Q. 90. About how long that day, if you recollect, were you and Mr. Evans sitting or standing by the stove listening to talk through something which you think was like exhibit "A"?

A. Indeed, I couldn't tell you how long we were there, but we were in: I couldn't tell you how long.

Cross-Q. 91. You think that both "A" and "E," or things like them, were in the room all the time you were there, do you?

[*Form of the question objected to, because witness has in answer to question* 17 *positively identified exhibits "A" and "E" as talking-machines which he saw at Drawbaugh's shop on the occasion of a visit by Jacob Evans and himself, to which he has testified.*]

A. Yes, sir.

Cross-Q. 92. You have told us that Mr. Drawbaugh went into another room; what other room?

A. Right across from—there was a partition through, you know,—he went right over.

Cross-Q. 93. Did you see him go into the other room?

A. Yes, sir.

Cross-Q. 94. Did the door through which he went lead from one room right into the other?

A. Yes, sir.

Cross-Q. 95. Then there was nothing but a single wooden partition between you and him; is that it?

A. Yes, sir.

Cross-Q. 96. How many rooms were there at that time on that floor altogether, as you recollect it?

A. That I don't recollect.

Cross-Q. 97. You have described yourself as a farmer. Are you farming on your own account or for some other party? And if the latter, for whom?

A. I am farming on the shares—for half—for John Zimmerman.

Cross-Q. 98. John Zimmerman owns the farm, does he?

A. Yes, sir.

Re-direct by Mr. Jacobs:

Q. Q. 99. What led you and Jacob Evans to go to Drawbaugh's shop on the occasion of which you have spoken—I mean for what purpose did you go there?

[*Objected to as new matter, not re-examination.*]

A. We heard them talking about this machine, you know; and we thought we would go down there and see it. We went down, and Dan showed it to us, and we got looking at it, and fooling around there with it.

Q. Q. 100. About what machine did you hear them talking?

[*Same objection.*]

A. The talking-machine, or telephone.

Q. Q. 101. It appears, upon your cross-examination, that you moved to Milltown, or Eberly's Mills, in the spring of 1876. Was it before or after you moved to Milltown that you and Jacob Evans made the visit to Drawbaugh's shop, about which you have testified?

[*Objected to as not re-examination, and as leading.*]

A. Before I moved to Milltown, in 1875, we were at the shop.

Q. Q. 102. You were asked, on cross-examination, whom you had spoken to, before coming upon the stand, with regard to Drawbaugh's talking-machine, and your knowledge of the same. This morning, be-

fore being called to testify, you told me of your visit to Drawbaugh's shop, in company with Jacob Evans, in the fall of 1875, and that you had both seen Drawbaugh's talking-machine at that time and place. Please state whether or not you have ever, before this morning, told Daniel Drawbaugh, or any one acting in his interest, of that visit of yourself and Jacob Evans, and your then and there seeing Drawbaugh's talking-machine.

[*Objected to as leading.*]

A. Oh, I have talked to people about it already; and people talked to me about it, too.

Q. Q. 103. My question is, whether, at any time before you told me in my office this morning, you had ever spoken of your visit with Jacob Evans to Drawbaugh's shop in the fall of 1875, and your seeing the talking-machine then and there, to Daniel Drawbaugh, or anyone acting for him in this case?

[*Objected to on the same grounds as above, and also because it does not appear whether or not the witness is aware how many persons are acting in Mr. Drawbaugh's interest, or for Mr. Drawbaugh.*]

A. Not more than I told Shank the other week of him and me being there and seeing them—not that I know of at the present time.

Q. Q. 104. What did you tell Shank?

[*Objected to as already fully answered by the last preceding answer, elicited by a leading question; and the only object, therefore, of the present question can be to lead or induce the witness to contradict or qualify the plain meaning of this last answer.*

Respondents' counsel replies that there will be ample time to argue questions of evidence before the Court when the case comes to be heard.]

A. We talked about it, you know; he asked me if I knowed anything, and I told him I did. That was all I told him.

Q. Q. 105. Did you or not then tell Shank of the visit of yourself and Jacob Evans to Drawbaugh's shop?

[*Same objection.*]

A. No; I didn't tell Shank about it. Shank asked me if I knew anything about the telephone, and I told him I did—that I seen it in

1875. I didn't just tell him who was with me. But Evans was with me when I was down.

Q. Q. 106. It has appeared in evidence that the complainants have employed, as a confidential agent for looking up testimony, a man by the name of John C. Comfort. Do you know him?

A. Yes, sir; I know him.

Q. Q. 107. Was he ever to see you?

[*Objected to as immaterial and not re-examination.*]

A. Yes; he was to see me last spring.

Q. Q. 108. State whether or not you told Mr. Comfort at that time that you had knowledge of Daniel Drawbaugh's talking-machine.

[*Objected to as not re-examination, and as immaterial and incompetent.*]

A. No, sir; I didn't tell him. I told him I knowed nothing about it. I was very busy at that time, and I went on with my work.

Q. Q. 109. As I was passing down the steps from this room after the morning session, you laid your hand upon my shoulder and said that you wished to make a correction with regard to the length of time which has elapsed since you first heard of this suit; did you not?

A. Yes, sir.

Q. Q. 110. I then stated to you that I could not talk about the matter, but would ask you about it on your redirect examination, did I not?

[*This mixed line of statement and examination objected to; and complainants' counsel suggests that if the witness has any correction to make he make it voluntarily in the well-known proper way.*

Respondents' counsel replies that his only motive for this line of examination is to show that the witness' desire to make the correction, was communicated to him voluntarily, and not elicited by any conversation or question on the part of the respondents or their counsel or agents; and complainants' counsel is at liberty to cross-examine as he sees fit.]

A. Yes, sir.

Q. Q. 111. What is now your recollection as to the length of time which has elapsed since you first heard of this suit?

A. Four years ago.

Q. Q. 112. At the time of the visit of yourself and Jacob Evans to

Drawbaugh's shop in the fall of 1875, had you any acquaintance with the subject of electricity?

A. No; not that I mind of at the present time.

Examination taken, reduced to writing, and by the witness affirmed and subscribed to before me, this 3d day of December, 1883.

FRED. M. OTT,
Examiner.

JOHN SIMMONS.

Adjourned until December 4, 1883, at 10 A. M.

December 4, 1883, 11 *A. M.*

Examination resumed pursuant to adjournment.

Present, Mr. Storrow and Mr. Howson for complainants, and Mr. Hill and Mr. Jacobs for respondents.

HENRY MILLER *being produced, affirmed, and examined, saith:*

Examined by Mr. Hill:

My age is twenty-three; residence, Eberly's Mills, Cumberland county, Pennsylvania; occupation, farming.

Q. 1. How long have you lived at Eberly's Mills?

A. That is more than I can tell you. I have lived there awhile and then would go away again. I am not living there now; but I get my mail there, and my home is there.

Q. 2. Did you ever live on the Studebaker farm which lies on the York county side of the Yellowbreeches, close to Etter & Shanklin's mill?

A. Yes, sir.

Q. 3. Who was farming that farm while you lived on it?

A. David Spangler.

Q. 4. Did you work for Mr. Spangler on the farm?

A. Yes, sir.

Q. 5. At what time did you begin to work for him?

A. April 1st, 1873.

Q. 6. When did your work for him end?

A. It ended in the spring of 1875—the first of April.

Q. 7. Did you work for him right along from the early part of April, 1873, to the early part of April, 1875, or not?

A. No, sir.

Q. 8. What part of the time did you work for him?

A. I worked for him nine months in the year.

Q. 9. What nine months?

A. Nine months commencing on the 1st of April.

Q. 10. During the three months in each year that you were not working, what were you doing, and where were you living those two years?

A. I was living with Mr. Spangler and going to school.

Q. 11. Did you ever live on that farm at any time before the 1st of April, 1873, or after the 1st of April, 1875?

A. No, sir.

Q. 12. How far was Mr. Spangler's house on that farm from the foot-bridge across the Yellowbreeches at Etter & Shanklin's mill?

A. About two hundred yards.

Q. 13. Was the foot-bridge in sight from the house or not?

A. It was not.

Q. 14. What prevented?

A. A hill.

Q. 15. While you lived with Mr. Spangler there on that farm, do you remember whether there was a flood in the Yellowbreeches or not?

A. There was.

Q. 16. Can you tell us when that flood occurred?

A. In the month of August, 1873.

Q. 17. Will you further tell us whether that flood in the month of August, 1873, did or did not damage the foot-bridge at Etter & Shanklin's mill?

[*Objected to as leading.*]

A. It damaged it.

Q. 18. What is your recollection about the damage which it did to it?

A. My recollection is that it had taken away the platform at the bridge—that you walked up on.

Q. 19. At which end—the York county or Cumberland county end of the bridge?

A. The York county end.

Q. 20. What is your recollection as to the length of that portion of the structure which was carried away by the flood?

[*Objected to as inquiring for guess-work.*]

A. My recollection is that it was about sixty feet long.

Q. 21. Were there any trestles under it or not, so far as you remember?

[*Objected to as leading.*]

A. So far as I remember there was.

Q. 22. Tell us whether or not that foot-bridge was carried away at any other time afterwards while you lived at Spangler's, on the Studebaker farm.

A. It was.

Q. 23. How?

A. By the ice.

Q. 24. When?

A. In February, 1875.

Q. 25. Have you been across that foot-bridge within the last year or two?

A. I have.

Q. 26. How did the length of the platform or approach to the bridge, on the York county side, that was carried away by the flood of August, 1873, compare with the length of the present platform at the York county end of the bridge?

[*Objected to as inquiring for opinion, not evidence.*]

A. The one that was there in 1873 was longer than the one that is there now.

Q. 27. And which was the steeper—the one that was there in 1873, or the present one?

[*Same objection.*]

A. The present one is the steeper; it would hardly be any shorter if it wasn't.

[*Deposition objected to as immaterial and not in rebuttal.*]

Cross-examined, de bene esse, by Mr. Howson:

Cross-Q. 28. How lately have you had occasion to go to or across the Etter & Shanklin bridge, and what was your errand at that time?

A. I crossed it last Sunday two weeks ago to see the new wagon-bridge that they are building there.

Cross-Q. 29. Did you at that time take particular notice of the foot-bridge—of its length and the length of the various parts of it; and if yes, what led you to do so?

A. I did not.

Cross-Q. 30. At the time of the flood which you think occurred in August, 1873, you were a lad of twelve or thirteen, were you not?

A. I was thirteen.

Cross-Q. 31. What is your idea of the entire length of the bridge at Etter & Shanklin's mill, as it existed in 1873, including the approach on the York county side which you think was washed away, and also the approach on the Cumberland county side?

A. I have no idea at all of the length.

Cross-Q. 32. When you were at the bridge a couple of Sundays ago, did you notice whether there was a trestle under the approach on the York county side?

A. There was.

Cross-Q. 33. You tell us that you call Eberly's Mills your home; are your parents living there; or is either of them living there?

A. My mother and sister are living there.

Cross-Q. 34. Did your father at any time live there, and if yes, during what period of time?

A. He lived there; it is more than I can tell you what year it was in.

Cross-Q. 35. Is he living now or dead; and if the latter, when did he die?

A. He is dead; he died fifteen years ago.

Cross-Q. 36. What is the farthest distance from Eberly's Mills at which you have been living and working at any time since 1873; and how long were you there?

A. I lived ten miles from there six months.

Cross-Q. 37. During what six months?

A. April, May, June, July, August, and September.

Cross-Q. 38. Of what year?

A. I cannot tell you what year, sir.

Cross-Q. 39. Tell us, as nearly as you can, all the different places, other than that last mentioned, at which you have been living and working since you left the Studebaker farm; and tell us how far each of the places is from Eberly's Mills.

A. I lived with John M. Fisher; I can't tell how far that is from Eberly's Mills; I don't look for handboards much. I generally drive pretty fast. He lived in Fairview township, York county. I also lived with John Hull of the same county and township. I lived with Henry

Zimmerman, of Lower Allen township, Cumberland county; with Elias Hake, Fairview township, York county; that is all.

Cross-Q. 40. During the ten years which have elapsed since 1873, about how frequently has it been your custom to visit your home at Eberly's Mills?

[*Objected to as immaterial and as irrelevant to the examination-in-chief.*]

A. About once a month.

Cross-Q. 41. Have you not lived at your home at Eberly's Mills during some part of each of the years since 1873?

[*Same objection.*]

A. Yes, sir.

Cross-Q. 42. When were you notified to come here to give your testimony, and who notified you?

A. I was notified last Saturday by Abraham Shank.

Examination taken, reduced to writing, and by the witness affirmed and subscribed to before me, this 4th day of December, 1883.

FRED. M. OTT,
Examiner.

HARRY MILLER.

Mrs. ANNIE MECLEAF, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

My age is twenty-five; residence, six miles from Chambersburg, Franklin county, Pa., at a place called Fayetteville.

Q. 1. When were you married?

A. In 1875.

Q. 2. What was your name before you were married?

A. Ditlow.

Q. 3. What was your father's name?

A. David Ditlow.

Q. 4. What relation are you to Abraham and Joseph Ditlow, and to Mrs. Mary Evans?

A. First cousin.

Q. 5. Did your father's family ever live near Etter & Shanklin's mill, Lower Allen township, Cumberland county, Pa.?

A. Yes, sir.

Q. 6. When?

A. He lived eighteen years up to the spring of 1875.

Q. 7. Where did you move then?

A. We moved then to Camp Hill.

Q. 8. Did you live in your father's family up to the time when he moved to Camp Hill?

A. Yes, sir; I lived with him.

Q. 9. How far was the house that he lived in during those eighteen years from the foot-bridge at Etter & Shanklin's mill?

A. I just couldn't tell you how many yards it was; but it wasn't very far.

Q. 10. Could the bridge be seen from the house?

A. No, sir; a hill hid it.

Q. 11. While you lived there near Etter & Shanklin's mill, do you remember any flood in the Yellowbreeches in the summer time, or not?

A. Yes, sir.

Q. 12. In what year was that?

A. In 1873.

Q. 13. In what part of the summer?

A. In August.

Q. 14. Tell us whether it did or did not do any damage to the foot-bridge at Etter & Shanklin's mill.

A. It did.

Q. 15. What damage?

A. It took a part of the bridge away—to the first pier on the York county side.

[*Deposition objected to as immaterial and not in rebuttal.*]

Cross-examined, de bene esse, by Mr. Howson:

Cross-Q. 16. Have you been living at Fayetteville ever since your marriage?

A. No, sir.

Cross-Q. 17. How long have you been living at Fayetteville, and where did you live before moving there?

A. We will be living there two years next spring. We lived in Scotland, Franklin county, before moving there. Franklin county is the next county south of Cumberland county.

Cross-Q. 18. How long did you live at Scotland, and where were you living before going there?

A. We lived one year at Scotland, and then we moved to Greenwood and lived there three years.

Cross-Q. 19. What time in 1875 was it that your father's family moved from the place near Etter & Shanklin's mill?

A. In the spring.

Cross-Q. 20. What I wished to know was, what time in the spring —what month?

A. The latter part of March.

Cross-Q 21. After that, did you continue to live in your father's family at Camp Hill; and if yes, how long?

A. I didn't live with him after he moved to Camp Hill.

Cross Q. 22. Where, then, did you move to at the time your father moved to Camp Hill?

A. I came back to the old place.

Cross-Q. 23. Is any relative of yours married to any relative of Daniel Drawbaugh; and if yes, who are the parties?

[*Objected to as immaterial.*]

A. There is nobody married to anybody on Dan's side; my brother is married to one of Squire John B. Drawbaugh's daughters; John B. Drawbaugh is a brother of Dan.

Cross-Q. 24. Is your father still living—and if yes, please state where?

A. He is living at Camp Hill.

Cross-Q. 25. When were you notified to come here to testify, and by whom?

[*Objected to as immaterial.*]

A. On the third of December, by Mr. Shank.

Cross-Q. 26. Was that the first time you had been spoken to about giving testimony in this case, or had been asked whether you could give testimony in it?

[*Same objection.*]

A. No, sir.

Cross-Q. 27. When had you been spoken to on the subject before, and by whom?

[*Same objection.*]

A. By Harry Drawbaugh on Saturday, the 1st of December; he is Dan's brother.

Cross-Q. 28. What did Harry Drawbaugh tell you on that occasion when he saw you on the 1st of December?

[*Objected to as calling for hearsay, as irrelevent to the examination-in-chief, and as otherwise incompetent.*]

A. He didn't tell me anything. He just came and asked me a few questions.

Cross-Q. 29. How long have you known that this suit was going on?

[*Objected to as immaterial and irrelevent.*]

A. About two years.

Cross-Q. 30. And did nobody during those two years, before Mr. Harry Drawbaugh's visit to you on the 1st of December, speak to you about giving testimony in this suit, or ask you whether you could do so?

[*Same objection.*]

A. No, sir.

Cross-Q. 31. Who were the persons composing your father's family in 1873, and living with him near the Etter & Shanklin mill?

A. David M. Ditlow, my brother; Alfred Ditlow, a brother; George Ditlow, a brother; Hiram Ditlow, my brother; my sister Lillie, and my sister Emma. That was all except my mother and my father.

Cross-Q. 32. Was there another Ditlow family living close by at the same time; and if yes, name the members of that family living there in 1873?

A. Yes, sir; there was a family living there. There was Mary Ditlow and her mother. They were the only ones who were at home. Mary Ditlow is now Mrs. Mary Evans.

Cross-Q. 33, About how far from your family was that other family of Ditlows living in 1873?

A. They just lived across the road; I couldn't just tell you how far it was; it was just like living across the street; their house stood on one side and ours on the other.

Cross-Q. 34. And what was the name of the father of this other family of Ditlows?

A. Abraham.

Cross-Q. 35. I judge from your testimony that you, yourself, were living close by the Etter & Shanklin mill for about seventeen years before and up to March, 1875; is that correct?

A. We lived eighteen years there.

Cross-Q. 36. Will you tell us how many accidents to the Etter &

Shanklin foot-bridge you remember to have occurred while you were living in the neighborhood besides the one which you think happened in August, 1873?

[*Objected to as irrelevant to the examination-in-chief and to the issue.*]

A. None that I know of but that one in 1873.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 4th day of December, 1883.

FRED. M. OTT,
Examiner.

ANNIE MECLEAF.

Recess until 2 P. M.

AMOS ZIMMERMAN, *being produced, affirmed, and examined, saith:*

Examined by Mr. Hill:

My age is thirty-six; residence, Fairview township, York county, Pennsylvania; occupation, farming.

Q. 1. How long have you lived on the farm which you now occupy?

A. Ever since I was born.

Q. 2. Does that farm lie on the Yellowbreeches?

A. Yes, sir.

Q. 3. Up or down from Etter & Shanklin's mill, and how far?

A. It is the second farm south. It is up and down, too. The creek makes a bend; and the Studebaker farm is in the point formed by the bend. My farm touches the creek at the east and west corners of the Studebaker farm. My farm lies right back of the Studabaker farm.

Q. 4. How far is your dwelling-house from the foot-bridge at Etter & Shanklin's mill?

A. About a half a mile.

Q. 5. Do you have occasion to cross the creek there at the foot-bridge pretty often, or not?

A. Yes, sir; pretty often.

Q. 6. Is your father living? If not, where did he die?

A. He ain't living; he died in 1874, I think—the 14th of September, as near as I can recollect.

Q. 7. Did he used to live on the farm on which you now live?

A. Yes, sir.

Q. 8. Do you remember anything about the foot-bridge at Etter & Shanklin's mill having been damaged by high water in the Yellow-breeches at any time in the summer season; and if so, when?

A. Yes, sir; in the middle of August, 1873.

Q. 9. How do you fix the time?

A. It was the last year I farmed for my father; he farmed, but I done the work.

Q. 10. The next year—the year of his death—did you work for yourself?

A. No; I worked by the day.

Q. 11. At the time when that high water occurred in August, 1873, did it do any damage to your crops or not?

A. Oh, a little to the corn.

Q. 12. Did you have any corn down along the creek?

A. Yes, sir.

Q. 13. How well along was the corn towards maturity at that time?

A. It had been out in ears—just commencing to drive ears. It was a little late—that corn.

Q. 14. What damage did that flood do to the foot-bridge at Etter & Shanklin's mill?

A. It tore the walk away on the York county side where you go up on—or the platform as you may call it.

Q. 15. How soon after that was the bridge again carried away?

[*Objected to as assuming what has not been testified to.*]

A. In 1875, about the latter part of February, as near as I can recollect.

Q. 16. It was carried away then by ice, was it not?

A. Yes, sir.

Q. 17. Do you remember whether any repairing was done to the bridge between the time when the end of it was carried away in August, 1873, and the time when the ice carried it away in February, 1875?

A. Yes, sir; there was.

Q. 18. What do you remember about it?

A. The platform was put up again on the York county side; and also the Cumberland side was fixed up a little.

Q. 19. What fixing up was done on the Cumberland county side?

A. Put in a new log and fixed the steps that you go up on.

Q. 20. Do you remember who put in that log?

A. Yes, sir. Jake Eshleman was the supervisor, and Isaac Zimmer-

man was the carpenter who put the log in.

Q. 21. Do you know where they got that log?

A. I don't know just exactly; but I suppose at New Cumberland.

Q. 22. Do you remember whether or not the York county end had been fixed up before the log was put in on the Cumberland end?

A. I think it was all at one time, as near as I can recollect.

Q. 23. The work on the York county end and the work on the Cumberland county end were done under different supervisors belonging to different townships of different counties; were they not?

A. Yes, sir.

[*Deposition objected to as immaterial and not in rebuttal, and cross-examination, de bene esse, by Mr. Howson:*]

Cross-Q. 24. Can you tell us about how high above the water, at ordinary level, the Etter & Shanklin bridge was, as it existed in 1873?

A. The flat part above the stream was about eleven feet above low water mark, or along there.

Cross-Q. 25. I suppose there is some slope to the bank of the creek on the York county side; if yes, is it steep or the reverse?

A. There is a little slope.

Cross-Q. 26. Was the log, which you say was put in the bridge on the York county side, put in to replace one which had become rotten or imperfect?

A. Yes, sir.

Cross-Q. 27. Do you remember when it was this job and the one of replacing the approach to the bridge on the York county side were done?

A. As near as I can recollect it was sometime in September, or along there, of 1874.

Cross-Q. 28. Who was the supervisor, if you recollect, and who did the job on the York county side?

A. Christ. Short was the supervisor, as near as I can recollect; he is dead now. The man who did the job was Hamilton, if my memory serves me right; his first name I couldn't say.

Re-direct by Mr. Hill:

Q. Q. 29. Are you certain whether or not the name of the supervisor on the York county side was Short or Sweeny?

[*Objected to as leading.*]

A. I couldn't say for that part; but my memory is that way—that I think it was Short.

Q. Q. 30. Give the full name of Mr. Short.

A. Christian Short.

Q. Q. 31. You have stated that you think the repairs were done in September, 1874. May you not be mistaken in this, and may they not have been done in the fall of 1873?

[*Objected to as leading.*]

A. No, sir.

Q. Q. 32. If it should be shown in evidence that the log for the Cumberland end of the bridge was procured at New Cumberland in September, 1873, and put into the bridge on the 17th day of November, 1873, what would you think then?

[*Objection continued, this being an incompetent and improper way of getting at the witness' recollection.*]

A. I wouldn't think nothing else but that my memory must have served me wrong.

Q. Q. 33. But whenever it was put in, it is your recollection that the repairs on the York county end were done at or about the same time, is it?

A. Yes, sir.

Examination taken, reduced to writing, and by the witness affirmed and subscribed to before me, this 4th day of December, 1883.

FRED. M. OTT,
Examiner.

AMOS ZIMMERMAN.

MRS. ELIZABETH SPANGLER, *being produced, affirmed, and examined, saith:*

Examined by Mr. Hill:

I am the wife of David Spangler of Camp Hill, Cumberland county, Penn'a.

Q. 1. When were you married?

A. The 18th of October, 1874.

Q 2. Where were you living at that time?

A. I was living at Mr. Spangler's, on the Studebaker farm in York

county, close to Etter & Shanklin's mill; I married Mr. Spangler's son.

Q. 3. When did you begin to live there at Mr. Spangler's?

A. I suppose it was some time in May, 1873. It was either in May or June; I couldn't tell you the exact time.

Q. 4. You are certain about the year being 1873, are you?

A. Yes, sir.

Q. 5. When did you move away from there?

A. March 4th, 1875, I think—I am certain it was the 4th of March, 1875.

Q. 6. During the time you lived there on the Studebaker farm, was any damage done to the foot-bridge across the Yellowbreeches at Etter & Shanklin's mill? If so, how many times was it damaged by water or ice?

A. It was swept away by ice when it went altogether. There was a kind of a platform that went up on the bridge on the York county side; that was taken away by water.

Q. 7. When was it that the bridge was carried away by ice?

A. It was in the spring of 1875; I can't tell you the exact time. It was sometime that spring before I moved away.

Q. 8. When was it that the platform on the York county end of the bridge was carried away by water?

A. In 1873.

Q. 9. About what time in 1873?

A. In the fall sometime—sometime after harvest; I couldn't tell you the exact time.

Q. 10. While you lived there on the Studebaker farm did you have occasion to cross that foot-bridge frequently?

A. Yes, sir.

Q. 11. What is your recollection about the time when that bridge was repaired after the water washed the platform away in 1873?

A. They put a plank up so that a person could walk up on it. The platform went away by the water. I don't know anything about the platform being replaced.

[*Deposition objected to as immaterial and not in rebuttal, and cross-examination, de bene esse, by Mr. Howson:*]

Cross-Q. 12. A few moments ago you said that you remembered Mr. Spangler putting up a plank in place of the platform at the York county end, which was carried away by the water; which Mr. Spangler do you mean?

A. Suppose it would be his father—Mr. David Spangler the older—I suppose he would have helped to put it up; I can remember of them putting a plank up to walk across on.

Cross-Q. 13. That was done a few days after the regular platform had been carried away, was it not?

A. I can't tell you how long afterwards it was done.

Examination taken, reduced to writing, and by the witness affirmed and subscribed to before me, this 4th day of December, 1883.

FRED. M. OTT,
Examiner.

LIZZIE SPANGLER.

DAVID SPANGLER, Jr., *being produced, affirmed, and examined, saith:*

Examined by Mr. Hill:

My age is thirty-three: residence, Camp Hill, Cumberland county, Pennsylvania; occupation, huckstering.

Q. 1. You are a son of Mr. David Spangler who testified here the other day?

A. I am.

Q. 2. Do you remember your father living on the Studebaker farm, close to Etter & Shanklin's mill?

A. Yes, sir.

Q. 3. How long did he live there?

A. Two years.

Q. 4. When did he move away from there?

A. In the spring of 1875—about the 1st of April.

Q. 5. Are you the husband of Mrs. Lizzie Spangler who has just testified in this case?

A. Yes, sir.

Q. 6. Did you live in your father's family while he lived on the Studebaker farm?

A. Yes, sir.

Q. 7. Did you go to live there when he did?

A. Yes, sir.

Q. 8. You were married in the fall of 1874, I believe, were you?

A. Yes, sir.

Q. 9. Did your wife live there in your father's family before you married her?

A. She did.

Q. 10. When did you and your wife move away from the Studebaker farm?

A. In the beginning of March, 1875.

Q. 11. You moved away, then, about a month before your father did, did you?

A. Yes, sir.

Q. 12. Do you remember any damage having been done to the foot-bridge at Etter & Shanklin's mill while you lived there on the Studebaker farm, either by ice or by water?

A. Yes, sir.

Q. 13. How many times was the bridge so damaged while you lived there?

A. Twice.

Q. 14. When was it first damaged, and how?

A. In the fall of 1873, by water.

Q. 15. About what time in the fall?

A. It was some time in August.

Q. 16. What damage was done to it at that time?

A. It swept away the ends where you walk on the main bridge.

Q. 17. Both ends, or only one?

A. It swept the one away and the other one it swung around.

Q. 18. Which end did it sweep away?

A. The York county side.

Q. 19. To the best of your recollection, about how long was the part that it carried away on the York county side at that time?

[*Objected to, it not appearing that the witness has any competent means of knowledge of the subject inquired of.*]

A. About fifty feet.

Q. 20. Was that part supported by trestles or not?

A. It was supported by one trestle in the middle and a few supports at the end.

Q. 21. Give us, as near as you can, the time when the damage thus done to the foot-bridge in August, 1873, was repaired, and the York county end replaced or rebuilt?

A. It was done, as near as I can remember, between the time it was swept away and the holidays.

Q. 22. Do you mean the Christmas holidays at the end of 1873?

A. Yes, sir.

Q. 23. Mr. Amos Zimmerman testified here to-day that a new log was put in on the Cumberland side of the bridge; do you know anything about that?

[*Objected to as leading.*]

A. I do not remember.

Q. 24. You have referred to the fact of the bridge having been damaged a second time while you lived there; when was that, and how was it damaged?

A. In February, 1875, by ice.

Q. 25. Do you know Daniel Drawbaugh of Eberly's mills?

A. Yes, sir.

Q. 26. Were you ever at his shop while you lived on the Studebaker farm?

[*Objected to as leading.*]

A. I was.

Q. 27. How many times?

A. I can't recollect that.

Q. When you were in his shop, while you were living on the Studebaker farm, did you see any talking-machines there or not?

[*Objected to as leading, also as not rebuttal.*]

A. Yes, sir; I did, once.

Q. 29. About what time do you think that was, to the best of your recollection?

[*Objected to as not asking for evidence.*]

A. To the best of my recollection, it was in the fall of 1874.

Q. 30. Please look at the machines now placed on the table before you marked "A," "B," "F," "C," "C reproduced," and "I," and state whether you ever saw any of them while you lived on the Studebaker farm; and if so, which ones, and where?

[*Objected to as leading and incompetent, no attempt having been made to extract from the witness any unaided description of anything alleged to have been seen by him during the period referred to in the question; and further, because the question puts the period of time into the witness's mouth.*]

A. To the best of my recollection, this is the one [indicating "I"]—in the shop.

Q. 31. Do you remember whether you saw any other talking-machine at the time when you saw this one ["I"] or not?

[*Objected to as leading.*]

A. I do not remember at the present time.

Q. 32. Do you remember what day of the week it was when you saw that machine at Mr. Drawbaugh's shop?

A. On Sunday.

Q. 33. Did you have any conversation with Mr. Drawbaugh about it that Sunday?

[*Objected to as leading.*]

A. He explained it to us.

Q. 34. Do you remember what his explanation was?

A. It was about talking through it—how far you could talk—and about patenting it and such like.

Q. 35. Do you remember what he said about patenting it?

A. To the best of my recollection, he was talking about getting it patented, but he hardly felt able at the time.

Q. 36. Do you remember what he said about how far he could talk with it?

A. I do not.

Q. 37. Had you ever heard anything about his talking-machine invention before that time or not?

[*Objected to as incompetent, also as leading.*]

A. I had.

Adjourned until December 5, 1883, at 10 A. M.

December 5, 1883, 10.45 *A. M.*

Examination resumed. Present, Mr. Storrow and Mr. Howson for complainants, and Mr. Jacobs for respondents.

David Spangler, junior, on the stand.

[*Deposition objected to as not rebuttal, and cross-examination, de bene esse, by Mr. Howson:*]

Cross-Q. 38. Where did you move to before you left the Studebaker farm?

A. To New Cumberland.

Cross-Q. 39. How long did you live there, and where did you move from there?

A. Two years, and then moved to Trindle Spring, about three quarters of a mile west of Mechanicsburg.

Cross-Q. 40. Where did you move to from there, and when?

A. I moved to Williams' Grove in 1878.

Cross-Q. 41. Where is Williams' Grove, and how long did you live there?

A. I would call it six and a half miles south-west of Mechanicsburg; I lived there two years.

Cross-Q. 42. Where did you go to next?

A. I moved between Mechanicsburg and Hoguestown, about a mile and a half from the former, and about two miles from the latter.

Cross-Q. 43. Where did you move from there, and when?

A. I moved to Camp Hill the coming spring three years ago.

Cross-Q. 44. And have been living there since that?

A. I have.

Cross-Q. 45. On Monday last a man by the name of John Simmons testified for the defense, gave his residence as Hampden township, Cumberland county, and stated that from 1876 down to the spring of the present year he was living at Milltown or Eberly's Mills. Is that John Simmons a relative of yours; and if yes, what is the relationship?

[*Objected to as irrelevant, immaterial, and not proper cross-examination.*]

A. The relationship is: He is my brother-in-law; I am married to his sister, and he is married to mine.

Cross-Q. 46. To whom lately, before taking the stand yesterday, had you mentioned the visit to Drawbaugh's shop to which you have testified?

A. I had mentioned it to Judge Hill.

Cross-Q. 47. On what day did you first attend in Harrisburg to give your testimony?

A. On Monday.

Cross-Q. 48. Tell us all the persons you met and talked with in this town on Monday.

A. That would be a little hard for me to tell.

Cross-Q. 49. Well, try your best.

A. Do you mean on this subject?

Cross-Q. 50. No; I mean your recollection as to whom you met and talked with in Harrisburg on Monday.

[*Objected to as irrelevant, immaterial, and not proper cross-examination.*]

A. It is hard for me to recollect.

Cross-Q. 51. Be good enough to name all the persons whom you can recollect.

[*Same objection.*]

A. I am not prepared.

Cross-Q. 52. Do you mean to say that you can't recollect any of the persons, or that you don't choose to tell me who they were?

[*Same objection.*]

A. I mean to say that I am not prepared at the present time to do so.

Cross-Q. 53. Are you acquainted with Mr. David M. Ditlow, a drover, now or lately residing at Camp Hill?

[*Same objection.*]

A. Yes, sir.

Cross-Q. 54. When and where did you last meet that David M. Ditlow?

[*Same objection.*]

A. This morning at Camp Hill.

Cross-Q. 55. When last before that?

[*Same objection.*]

A. Last evening at Camp Hill.

Cross-Q. 56. When last before that and where?

[*Same objection.*]

A. At Camp Hill every day I see him.

Cross-Q. 57. Have you lately seen that Mr. Ditlow at any other place than Camp Hill, and if yes, where and when?

[*Same objection.*]

A. I saw him on Monday in Harrisburg.

Cross-Q. 58. Now that I have refreshed your memory as to one person whom you met here in Harrisburg on Monday last, can you tell us of any others?

[*Same objection.*]

A. I am not prepared to answer that question.

Cross-Q. 59. You were present in the room yesterday afternoon when your wife was testifying, were you not?

A. I suppose you know that, as you were present.

Cross-Q. 60. In giving her testimony, your wife referred to the fact that when the approach or platform leading to the Etter & Shanklin bridge, on the York county side, was washed away by high water in the fall of 1873, your father placed or helped to place a plank there so that a person could walk up on it; how soon after the flood was that plank placed there?

A. I have no business with her testimony.

Cross-Q. 61. [Question 60 repeated.]

A. That was her testimony; not mine.

Cross-Q. 62. Well, let us have your testimony on the subject.

A. Directly after the flood was.

Cross-Q. 63. Who was with you when you made the visit to Mr. Drawbaugh's shop as to which you have testified?

A. I cannot recollect at present.

Cross-Q. 64. Do you recollect that any person was; and if more than one person, how many?

A. There was parties there—probably half a dozen.

Cross-Q. 65. Give me the names of any of the half dozen whom you recollect.

A. I am not prepared at this time.

Cross-Q. 66. Did you meet the half dozen there, or did you go with them there?

A. I wish to have time to collect my memory.

Cross-Q. 67. Didn't you think the subject over and collect your memory before you took the stand?

A. Too short a time for that question.

Cross-Q. 68. Then, didn't you, before taking the stand, take any time to think the matter over, and refresh your recollection as to the circumstances attending that visit?

A. I thought over the bridge question, but I hadn't time on the telephone—on the visiting his shop.

Cross-Q. 69. You have told us in your testimony that the high water of 1873 swung around one of the ends of the Etter & Shanklin bridge; which end was that which was so swung around?

A. I told you the end last evening—which end.

Cross-Q. 70. Please tell us again.

A. I wish to have a little understanding about that—float away or swung around?

Cross-Q. 71. You testified yesterday that one of the ends of that bridge was swung around, and I now ask you which of the ends was swung around.

A. I claim it ain't a fair question.

Cross-Q. 72. You understand the question, do you not?

A. I wish to know whether he means the end swung around or swept away?

Cross-Q. 73. Was one of the ends swung around—what is your recollection about that?

A. My recollection is that they both swung around or there would have none went away.

Cross-Q. 74. Well, do you or not wish us to understand that you distinctly recollect that both of the ends of that bridge were swung around at that time?

A. I will give you the answer that I gave you yesterday; the one end swept away and the other end swung around and held to the tree.

Cross-Q. 75. Which, then, of the ends was it that was swung around and held to the tree?

A. The Cumberland side.

Cross-Q. 76. What was the shape and the length of that approach on the Cumberland side?

A. I do not remember.

Cross-Q. 77. How lately have you seen the Etter & Shanklin bridge?

A. I have seen it recently.

Cross-Q. 78. How recently?

A. I can't tell you the date exactly; I often go to the mill.

Cross-Q. 79. When was the Cumberland county approach to the bridge, which you say was swung around, put back to its proper place?

A. I am not able to tell.

Cross-Q. 80. How long were you at Mr. Drawbaugh's shop on the occasion you have testified to?

A. Probably a couple of hours.

Cross-Q. 81. Tell us who, besides Daniel Drawbaugh, you found at the shop; and tell us all the things besides the talking-machine which you think you saw there.

A. I am not prepared to give the names; I saw the talking-machine, clock, hotel annunciator, faucet, and other articles at his shop.

Cross-Q. 82. Name some of the other articles.

A. He had been doing work for Hauck there; he had plaster-sowers. I am not able at the present time to give the other articles that I saw.

Cross-Q. 83. How long have you been acquainted with Mr. David M. Ditlow?

[*Objected to as irrelevant, immaterial, and not proper cross-examination.*]

A. Two or three years before we moved to the Studebaker farm.

Cross-Q. 84. How long have you known that this suit was going on? [*Same objection.*]

A. I have known it for three or four years; that is to the best of my recollection.

Examination taken, reduced to writing, and by the witness affirmed and subscribed to before me, this 5th day of December, 1883.

FRED. M. OTT,
Examiner.

DAVID H. SPANGLER.

Recess until 2 P. M.

GEORGE A. SPANGLER, *being produced, sworn, and examined, saith:*

Examined by Mr. Jacobs:

My age is thirty-five; residence, New Cumberland, Cumberland county, Pa.; occupation, blacksmith.

Q. 1. Where and with whom did you learn your trade?

A. With John K. Taylor, at Slate Hill, Cumberland county.

Q. 2. How far was his shop at Slate Hill from Eberly's mills?

A. About two short miles.

Q. 3. When did you begin to learn your trade with him?

A. On the 8th of July, 1868.

Q. 4. How long did you continue working there under John K. Taylor?

A. Not quite two years.

Q. 5. How did you come to quit his employ?

A. He quit blacksmithing.

Q. 6. For whom did you next work at blacksmithing, and where?

A. Emanuel Kauffman, at the same shop.

Q. 7. Did he take the shop when John K. Taylor quit blacksmithing?

A. He rented the shop when John Taylor quit.

Q. 8. Did you begin to work for Emanuel Kauffman at the time he took the shop from John K. Taylor; and if so, how long did you continue to work for Emanuel Kauffman?

A. I did; and I worked for him one year.

Q. 9. Did you work for him as an apprentice or as a journeyman?

A. As a journeyman.

Q. 10. You have stated that you began to learn your trade with Mr. Taylor on the 28th of July, 1868, and continued working under him not quite two years. Did you, during the whole of that time, work as an apprentice, or part of the time as a journeyman?

A. As an apprentice.

Q. 11. Did you ever hear of Daniel Drawbaugh's talking-machine? If so, when and where did you first hear of it?

[*Objected to as inquiring for hearsay.*]

A. While I was on Slate Hill; during the years that I lived on Slate Hill; I heard of it in the blacksmith-shop.

Q. 12. What blacksmith-shop do you refer to?

A. John K. Taylor's.

Q. 13. Did you hear it spoken of there once or more than once?

[*Objected to as leading.*]

A. It was frequent talk around.

Q. 14. Did you hear it spoken of by one person or more than one?

[*Objection continued.*]

A. By more than one.

Q. 15. Did you or not ever go to Drawbaugh's shop to see his talking-machine; and if not, why not?

[*Objected to as leading.*]

A. I did not. The reason is that we had talked about going one evening, and there was something occurred—I don't know what it was any more—that we didn't get off.

Q. 16. Did you ever live at Slate Hill after you quit work for Emanuel Kauffman?

A. I did not.

Q. 17. Did you ever work there after that time?

A. I did not.

[*Entire deposition objected to as immaterial, and not rebuttal.*]

Cross-examined. de bene esse, by Mr Howson:

Cross-Q. 18. How long have you been living at New Cumberland?

A. Since the spring of 1875.

Cross-Q. 19. Have you been blacksmithing there all that time?

A. Yes, sir.

Cross-Q. 20. Have you a shop of your own in New Cumberland, or are you working with somebody else?

A. I have a shop of my own.

Cross-Q. 21. Where were you living before you went to New Cumberland in 1875?

A. At Hake's blacksmith shop in York county.

Cross-Q. 22. Whereabouts in York county and how far from New Cumberland?

A. Along the Yellowbreeches creek, in Fairview township, about two miles from New Cumberland.

Cross-Q. 23. About how far then from Eberly's mill?

A. It is a mile straight through, and about a mile and a half by the road.

Cross-Q. 24. And how far is New Cumberland from Eberly's mills?

A. About two miles and a quarter.

Cross-Q. 25. You are a son, are you not, of David Spangler, and a brother of David Spangler, junior, who have both testified in this case?

A. I am.

Cross-Q. 26. How long were you at Hake's blacksmith shop?

A. Three years.

Cross-Q. 27. You went there from Kauffman's, did you?

A. I did not.

Cross-Q. 28. Where did you go to from Kauffman's?

A. I moved in with my father on Jake Garver's farm, in York county.

Cross-Q. 29. Whereabouts in York county?

A. In Fairview township, about three quarters of a mile from New Cumberland.

Cross-Q. 30. You were with your father there how long?

A. One year.

Cross-Q. 31. Do you know whether the John Taylor and Emanuel Kauffman referred to in your testimony are living yet; and if yes, where?

A. They are living yet; John K. Taylor resides on Slate Hill, and Emanuel Kauffman in Shiremanstown, Cumberland county.

Cross-Q. 32. When were you first notified to come here and testify?

A. Last evening.

Cross-Q. 33. What, if you know, is John K. Taylor's present business?

A. He trucks through the summer time and butchers through the winter.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 5th day of December, 1883.

FRED. M. OTT,
Examiner.

GEORGE A. SPANGLER.

J. PORTER HARRIS, *being produced, sworn, and examined, saith:*

Examined by Mr. Jacobs:

My age is forty-three; residence, Harrisburg, Pa,; occupation, upholstering.

Q. 1. A witness by the name of Cyrus Bowman has testified in this case on behalf of complainants [see complainants' printed record, p. 666, *et seq.*] that (at the time of testifying) his age was fifty-three; residence, Mongul, Franklin county, Pa.; occupation, miller; and that he lived at Eberly's Mills and ran George Leonard's mill there from April 1, 1874, to March 1, 1876. Is he related to you; and if so, how?

A. He is my brother-in-law; he married my sister.

Q. 2. Did you ever visit him whilst he lived at Eberly's Mills?

A. Yes, sir.

Q. 3. Did you ever hear that Daniel Drawbaugh had a talking-machine at his shop at Eberly's Mills; and if so, where and from whom did you hear it?

A. I heard Mr. Bowman's children speak of Mr. Drawbaugh having a talking-machine; I heard this over at Eberly's Mills.

Q. 4. Do you mean the children of Cyrus Bowman, your brother-in-law?

A. Yes, sir.

Q. 5. Did you, or did you not, hear that while your brother-in-law Cyrus Bowman lived at Eberly's Mills?

[*Objected to as leading.*]

A. I did.

Q. 6. Can you tell from which of his children you heard about Drawbaugh's talking-machine?

A. I cannot.

Q. 7. How many children did he have when he lived at Eberly's Mills?

A. I think there were four.

Q. 8. Are they all living?

A. Two are dead.

Q. 9. Where did they die?

A. At Eberly's Mills; at least I think they did; I am not positive.

Q. 10. As you recollect the matter, did you hear of Drawbaugh's talking-machine from the children of Cyrus Bowman who are now dead, or from those who are now living?

[*Objected to for the reason that the witness has already testified that he did not know from which children, and because it is leading; and because it asks for his vague guess-work upon a matter upon which he has no definite recollection.*]

A. I think it was from the older one that is dead.

Q. 11. Was that child a daughter or a son of Cyrus Bowman?

[*Same objection.*]

A. A daughter.

Q. 12. Do you remember what she said to you about it?

[*Objected to as hearsay.*]

A. She told me that Mr. Drawbaugh had a talking-machine; that I could hear it from upstairs down, or from downstairs up; I don't recollect which.

Q. 13. Whereabouts in Eberly's Mills did this conversation take place?

A. At Cyrus Bowman's house.

[*Deposition objected to as hearsay and not in rebuttal.*]

Cross-examination waived.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 5th day of December, 1883.

FRED. M. OTT,
Examiner.

J. PORTER HARRIS.

Adjourned until December 6, 1883, at 10 A. M.

DECEMBER 6, 1883, 10, A. M.

Examination resumed. Present, Mr. Storrow for complainants, and Mr. Jacobs for respondents.

JOHN C. SCHRADER, *being produced, sworn, and examined, saith:*

Examined by Mr. Jacobs:

My age is thirty-eight; residence, McCainsville, New Jersey; occupation, manufacturer of high explosives, and general agent for the Judson Powder Company.

Q. 1. Did you ever work for the Drawbaugh Manufacturing Company, at Eberly's Mills, Cumberland county, Pa.?

A. Yes, sir.

Q. 2. When did you begin, and how long did you continue to work there for that company?

A. I came there in November, 1868, and left in April, 1869.

Q. 3. In the day-book of the Drawbaugh Pump Company, the entries on which begin January 1, 1867, and run to February 10, 1873, which book has heretofore been produced before the examiner, and referred to in the taking of testimony in this case, I find the following entries on page 61, to wit:

"November 20, 1868, John Teahl, Dr.
To 1 day J. B. Drawbaugh
" 1 " H. Snavely,
1 " J. Smith
1 " J. Carns
1 " Shader
R. Echman 2.00"

Also, on p. 64, the following:

"December 4, 1868:

Paid hands, respectively, to wit:

C. Umberger	54.75	
H. C. Snavely	23.70	
H. Drawbaugh	27.87	
J. Smith	19.36	
J. Carns	18.80	
J. Schrader	34.87	
R. Echborn	62.97	
J. B. Drawbaugh	52.50	294.82"

Also on page 76, the following entries:

"Feb. 4th, 1869.

Paid Hands respectively, Cr.

J. B. Drawbaugh	30.60
C. Umberger	53.88

H. C. Snavely	16.90	
H. Drawbaugh	25.68	
Jacob Carns	19.60	
R. Echborn	38.00	
John Shroeder	54.34	
John Smith	20.24	259.24"

Also on page 82, the following entries:

"March 3, 1869. Paid Hands respectively Cash Account:

C. Umberger	25.00		
H. C. Snavely	20.00		
H. K. Drawbaugh	20.10		
J. Smith	20.00		
Jacob Carns	20.00		
John Shroeder	20.00	125.10	
R. Echborn		20.00	145.10"

Also on page 83, the following entries:

"March 17, 1869.

E. T. Houck, Cr.

by Cash	60.00	
" J. Carns' order	18.00	
" J. Shroeder's	15.00	
" C. Umberger's	15.00	
" Express on Augers	25	
" grate & tweer	3.00	
" per ct. on 3 Fauc	3.00	
" Expenses on pump	2.10	
		116.35"

Also on page 86, the following entries:

"April 8, 1869.

Paid Hands respectively

C. Umberger	$112.18	
H. K. Drawbaugh in full	56.67	
J. Carns	35.38	
J. Shroeder in full	137.21	
John Smith	33.42	
S. Zimmerman	185.90	
R. Eichborn	95.00	
Harry Snavely	38.00	
		693.76."

Are you the "Shader" and "J. Schroeder" referred to in these entries?

A. I presume so; there was no other Shrader there but me.

Q. 4. I also find upon page 75 of the same book the following entry:

' John Schrader Dr. to one faucet $3.00"

Do you know anything about that entry?

A. Yes; I bought that and sent it to a man down in New York State.

Q. 6. How soon after the payment in full to you of $137 21 did you leave Eberly's Mills?

A. Oh, I should think about a week or ten days after.

Q. 6. Where did you board whilst you were working there for the Drawbaugh Manufacturing Company?

A. When I came there I went to a family by the name of Hauck; I think that was the name. It was the same family where Charley Umberger was boarding, and where a boy who was working as apprentice in the shop there by the name of Jake Carns boarded. I left there and went over and boarded with a woman by the name of Maggie Gray; I am not sure about her name. A man by the name of Richard Echborn, who worked in the shop, was boarding there at the time. Gray was not her name; I forget her name. After that I went back to Hauck's again, where I first boarded. I stayed with them until they left Eberly's Mills, which was sometime in March, and then I boarded at Mr. Daniel Drawbaugh's until I left the place.

Q. 7. Who else was boarding at Daniel Drawbaugh's at the same time you were?

A. There was Charles Umberger and Jacob Carns, the same party that boarded at Hauck's.

Q. 8. When you left Eberly's Mills, were they, or not, still boarding with Daniel Drawbaugh?

A. Yes; they were still there.

Q. 9. Did Mr. Drawbaugh, whilst you boarded with him, keep any domestic servant; if so, whom?

A. There was a girl by the name of Maggie Darr.

Q. 10. Did you all sleep at Mr. Drawbaugh's house during the time you boarded with him?

A. Yes; Charles Umberger and Jacob Carns slept together in one bed, and I slept in another by myself, right over the dining-room.

Q. 11. In the same room with Umberger and Carns or in a different room?

A. In the same room.

Q. 12. Whilst you were working there for the Drawbaugh Manufacturing Company, as you have testified, did you ever see any talking-machines?

[*Objected to as not in rebuttal.*]

A. Mr. Drawbaugh on a few occasions took me up to his private room, which was over the machine-shop, and there showed me a machine which he called a talking-machine.

Q. 13. Did he explain to you what it was for and how it was to be used; and if so, tell so far as you can recollect what he said about it?

[*Same objection.*]

A. I do not recollect that he explained to me how it was to be used, but I do recollect distinctly that he said it was for the purpose of talking between distant points, as, for example, between Eberly's Mills and Harrisburg, which, I think, he used as an illustration. He also made the remark that it might be used to take the place of the telegraph.

[*Answer objected to by Mr. Storrow as hearsay.*]

Q. 14. Will you look at the exhibits now produced before you, and state whether or not you recognize any of them as instruments which you saw at the machine-shop at Eberly's Mills whilst you worked there?

[*Same objection.*]

[*The exhibits shown are "A," "B," "C," "D," "E," "F," "I."*]

A. The only machine which I recollect is this one, Exhibit "B."

Q. 15. When you saw it there was it in the same condition in which it now is?

A. No; there was a diaphragm on the end of the tin cylinder towards the electro-magnet, and I think an iron armature was fastened across the diaphragm—I don't know whether it was iron or steel. The bobbins on the electro-magnet were perfect at that time. They have all gone to pieces now, you see. I also recollect seeing some wooden pieces like the mouth-piece on Exhibit "F" lying on Mr. Drawbaugh's table.

Q. 10. Of what material was the diaphragm composed?

[*Same objection.*]

A. I think it was a piece of a bladder.

Q. 17. Was the electro-magnet at that time of the same size as the one now on the instrument "B," or did you, at different times, see different electro-magnets attached to it?

[*Objected to as leading in form, improper in substance, and not in rebuttal.*]

A. The electro-magnet on one occasion was, I think, as near as

possible the size of the one on exhibit "B;" whereas, on another occasion, a larger pair of electro-magnets was used.

Q. 18. State whether or not, whilst you boarded with Daniel Drawbaugh, you ever heard his talking-machine spoken of in his family.

[*Objected to as not rebuttal, and calling for hearsay.*]

A. I do recollect Mr. Drawbaugh speaking of it at the table on several occasions; and he spoke about it in the same spirit and in the same way that he talked to me up in the shop—that it would take the place of telegraphing, and that you could talk between distant points.

Q. 19. Did Charles Umberger and Jacob Carns board at Drawbaugh's all the time you did, or did they come there after you?

A. They came there the same time I came there, and they stayed there after I left.

Cross-examined by Mr. Storrow, de bene esse.

Cross-Q. 20. I understand from your 17th answer that you think you saw instrument "B" with an electro-magnet of the same size as that now on it, and afterwards saw it with a larger one; is that your memory?

A. Yes, sir.

Cross-Q. 21. I understand that on some occasion you saw at Mr. Drawbaugh's several wooden pieces like the mouth-piece of "F;" is that your memory?

A. Yes, sir.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 6th day of December, 1883.

FRED. M. OTT,
Examiner.

JOHN C. SCHRADER.

Recess until 2.30 P. M.

JACOB M. PETERMAN, *being produced, sworn, and examined, saith:*

Examined by Mr. Jacobs:

My age is forty; residence, Losh's Run, Miller township, Perry county; I am a laborer on the Pennsylvania railroad?

Q. 1. When did you move to Miller township, Perry county?

A. In 1863.

Q. 2. Where did you reside immediately before you moved there?

A. At Eberly's Mills.

Q. 3. You have been back to Eberly's Mills since you moved away, have you?

A. Yes, sir.

Q. 4. Have you any knowledge of Daniel Drawbaugh's talking-machine; and if so, when, where, and from whom did you first learn of it?

A. From Mr. William Darr, in the summer sometime of 1874, at Mr. Darr's shop, at the west end of the bridge, at Eberly's Mills.

Q. 5. A man by the name of William Darr testified in this case on behalf of the complainants [see complainants' printed record, page 358, *et seq.*] that he lived at Eberly's Mills, or Milltown, twenty years, and left there in 1870; that whilst living at Eberly's Mills he was an undertaker; and that after he left there he lived at Highspire, Steelton, and Harrisburg, in Dauphin county, Pa. Is that the Mr. William Darr from whom you first heard of Drawbaugh's talking-machine?

[*Objected to as leading.*]

A. That is the Mr. Darr, and we first talked of it—it seems to me—earlier than that; but I paid so little attention, and it is so long ago, that I hardly recollect any more.

Q. 6. You said in your answer to question 4 that you first learned of Daniel Drawbaugh's talking-machine from Mr. William Darr at Mr. Darr's shop at Eberly's Mills; where was Mr. Darr living at the time he told you about Drawbaugh's talking-machine?

[*Objected to as leading and improper.*]

A. In what we called the old mill.

Q. 7. Where was the old mill?

A. South of Eberly's mill then; I don't know who owns it now.

Q. 8. Do you mean the long building across the road from the grist mill at Eberly's Mills?

A. I don't know whether you might call it across the road or not, but it is right at head of the spring.

Q. 9. And how far from the grist-mill?

A. I don't suppose it is over ten or fifteen yards across from the main mill to the old mill.

Q. 10. Then your recollection is that whilst Mr. Darr lived at Eberly's Mills he spoke to you about Drawbaugh's talking-machine; is that correct?

[*Objected to as leading and as improper in view of the previous testimony of the witness.*]

A. Yes, sir.

Q. 11. What did he tell you about it at that time?

A. He told me Mr. Drawbaugh was inventing a talking-machine.

Q. 12. State whether or not you and Mr. Darr went down to Mr. Drawbaugh's shop on that occasion; and if so, for what purpose.

A. We went down to see the machine, and Mr. Drawbaugh wasn't at home.

Q. 13. What machine did you and Mr. Darr go down to see?

A. The talking-machine.

Q. 14. You have said that Mr. Drawbaugh was not then at home; did you find any one else at the shop?

A. No, not that I recollect of at that time.

Q. 15. Did you see the talking-machine at that time?

[*Objected to as leading.*]

A. Not that I recollect of—seeing it at that time me and Mr. Darr was there.

Q. 16. Did you see it at any other time? If so, when?

A. As near as I can recollect, I think it was in September, 1874, that I was over there and saw it.

Q. 17. Who was with you then?

A. Mr. John Topley, of Duncannon, was with me.

Q. 18. Anybody else?

A. I think, most, Mr. Emanuel Dietz was with us; I am not too positive on that matter, but I think he was.

Q. 19. Was Mr. William Darr with you and Mr. Topley at the time you saw the talking-machine?

A. No, sir; Mr. Darr wasn't with us at that time.

Q. 20. Do you know whether or not he was living at Milltown at that time?

[*Objected to as leading and improper, in view of the previous testimony of the witness.*]

A. I think he wasn't living there at the time of the last visit.

Q. 21. Did you ever have more than one conversation with William Darr, at his shop at Eberly's Mills, concerning Drawbaugh's talking-machine?

A. At only one time.

Q. 22. Do you know whether or not William Darr had a shop at Eberly's Mills after he ceased to reside there?

A. I would be unable to say whether he had or not.

Q. 23. Have you ever been at Eberly's Mills since the occasion when you and Mr. Topley were at Drawbaugh's shop and saw his talking-machine?

A. Not that I recollect of; I haven't been there since, that I recollect of.

Q. 24. Is Mr. Topley living or dead?

A. He is dead.

Q. 25. When did he die?

A. I couldn't really say how long afterward.

Q. 26. Was the visit of yourself and Mr. Topley to Drawbaugh's shop, when you saw the talking-machine there, soon, or long after your conversation with Mr. Darr at his shop, in which conversation he told you that Drawbaugh was inventing a talking-machine? Give us, as nearly as you can, the length of time that elapsed between the two occasions.

[*Same objection as to question* 20.]

A. The time that elapsed between the two occasions—the conversation that took place between me and Mr. Darr—had been for several years.

Q. 27. Do you mean that the time which elapsed between your conversation with Mr. Darr and your visit with Mr. Topley was several years?

[*Same objection.*]

A. Yes, sir.

Q. 28. Will you look at the exhibits now produced before you marked "A," "B," "C," "F," and "I," and state whether or not you saw any of them at Drawbaugh's shop when you and Mr. Topley were there together?

A. I think this is the one me and Mr. Topley—if my recollection serves me right—saw there [taking up "A."]

Q. 29. Who showed it to you?

A. Mr. Daniel Drawbaugh drawed our attention to it.

Q. 30. Have you any papers by which you are enabled to fix the

date of the visit of yourself and Mr. Topley to Mr. Drawbaugh's shop? If so, please produce them.

A. I think I have; them was presented to me after I returned home.

[*Witness produces note for twenty dollars, dated Newport, Perry county, Pennsylvania, July* 15, 1874, *payable sixty days after date, at the Newport Deposit Bank, to order of George Barrick; signed by Jacob M. Peterman, and indorsed by George Barrick, to which is attached a certificate of protest by C. A. Wright, notary public, dated September* 16, 1874.

Also, corresponding notice of protest.]

Q. 31. You say that those papers were presented to you after you returned home—returned home from where, do you mean?

A. From a visit to Harrisburg and Eberly's Mills.

Q. 32. How long after you returned home from that visit?

A. Two days after I arrived home; I arrived home on Saturday and got there on Wednesday evening.

[*Papers objected to on the ground that they do not fix the date of the visit, the connection between the two depending purely on an effort of memory.*]

Cross-examined by Mr. Storrow:

Cross-Q. 33. Have you had any conversation with Mr. Darr since the one you have referred to?

A. No.

Cross-Q. 34. Who first asked you about your recollection of any of the matters you have testified about?

A. Mr. Finn first drawed my attention to them.

Cross-Q. 35. Do you mean Squire Fenn, of Marysville?

A. Yes, sir.

Cross-Q. 36. Is Mr. Fenn engaged in hunting up witnesses for the defendants in this case?

A. I do not know.

Cross-Q. 37. When was it that he first spoke to you about it?

A. On Tuesday, the 4th of this month.

Cross-Q. 38. Do you mean day before yesterday?

A. Yes, sir.

Cross-Q. 39. Where did he speak to you about it?

A. At Losh's Run.

Cross-Q. 40. Have you seen Mr. Fenn since then?

A. I saw him yesterday; yes, sir.

Cross-Q. 41. Where?

A. Here in the city.

Cross-Q. 42. Where in the city?

A. I saw him on the streets.

Cross-Q. 43. Whom was he with?

A. That is more than I can tell you.

Cross-Q. 44. Have you seen him anywhere else here in the city?

A. I seen him in Mr. Jacobs' office.

Cross-Q. 45. Tell me everything you remember about the visit you think you made to Mr. Drawbaugh's shop with Mr. Topley.

A. Me and Mr. Tapley went over there from here—I have a child buried over there—to fix up a pair of tombstones; and from there, after we were through there, we went down to Mr. Drawbaugh's shop. Then Mr. Drawbaugh got to telling me he was inventing a talking-machine. And I said: "O, Dan, I guess it won't amount to much." "Well," he says, "I'll have it fixed up and take it to the Centennial, anyhow." I believe that was about all the conversation that passed regarding the machine.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 6th day of December, 1883.

FRED. M. OTT,
Examiner.

JACOB M. PETERMAN.

Adjourned until December 7, at 10 A. M.

DECEMBER 7, 1883.

Examination resumed.

Present, Mr. Storrow for complainants, and Mr. Hill and Mr. Jacobs for respondents.

SIDNEY S. REED, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

My age is sixty-five; residence, Union township, Porter county, Indiana, at a place called Wheeler; I am station agent at Wheeler, on the Pittsburgh, Fort Wayne and Chicago railroad, for the Pennsylvania Railroad Company, and have been so ever since 1872.

Q. 1. Are you acquainted with a man named Joseph Ditlow, who

originated in Pennsylvania, and has, at different times, been working for the farmers in the neighborhood of Wheeler, Indiana?

A. Yes, sir.

Q. 2. When did you first become acquainted with him, and where?

A. In the year 1870, at Wheeler, Indiana; that is the name of the railroad station and post-office; the township is Union township.

Q. 3. Are you acquainted with Daniel Drawbaugh, of Eberly's Mills, Cumberland county, Pa.; if so, when did you first become acquainted with him?

A. I was not acquainted with the gentleman until I met him here Wednesday morning last. I think he called at Wheeler, and Mr. Hill and Mr. Jacobs last September; but if he did I did not know who he was at the time, and had no conversation with him.

Q. 4. Have you ever been at Mr. Drawbaugh's shop, or at the village of Eberly's Mills, where it is located?

A. I never have been.

Q. 5. If you ever heard of Mr. Drawbaugh's talking-machine invention, will you please state when and where you first heard of it, and who mentioned it to you?

A. The first and only time I heard of it was about the time Mr. Joseph Ditlow first came to Wheeler, Indiana; he was there about a month or six weeks at that time; he came on the 17th of May, 1870, and boarded at my house. It was during the time that he boarded at my house that he mentioned it to me; I had been asking him where he came from, and questioning him, as Yankees generally do strangers.

Q. 6. If you have any book here containing any memoranda or entries made by you at the time and relating to Joseph Ditlow's boarding with you in the year 1870, will you please produce the book and point out the entries to the examiner, in order that he may copy them upon the record? And please give such explanation of them as will enable the court to understand the facts.

A. I have such a book and now produce it. It contains a record of his boarding with me at the time. These are the entries:

"1870. R. Woodhull, Dr.

To Joseph and Bill's Board from May 17th, 1870, to June 11th, 3 weeks and 4 days each		29.56	
Making shirts etc		2.25	
4 days & 1–2 Bordg Extra for Bill	2.28	4.56	36.37"

* * * * * * *

"Joseph came back Tuesday and went to work at noon 14th, 1870. Worked 4 1-2 days and left after Breakfast Monday morning, making 6 days Board at 57 $3.42."

The "Joseph" referred to in the book entry is the Joseph Ditlow already mentioned. The words, "14th, 1870," in the second entry, mean the 14th day of June, 1870.

Q. 7. Then if I understand your book entries correctly, as explained by you, Mr. Joseph Ditlow boarded with you from May 17, 1870, to June 11, 1870, three weeks and four days; then left you for a few days, and returned on June 14, 1870, and again boarded with you at that time four and a half days, making in all five weeks, one day and a half, that he boarded with you during the months of May and June, 1870?

A. Yes, sir.

Q. 8. Did he, or did he not, ever board with you at any time since June, 1870?

A. I think not; if he has, I have no record of it. I don't think he ever did. He has been around the neighborhood more or less since that time.

Q. 9. If you have with you here the freight receipt-book kept by you as station-agent for the Pennsylvania railroad company, at Wheeler, Indiana, for several years past, will you please produce it for inspection and allow us to copy from it any items that we may think desirable to put in evidence?

A. Yes, sir; I have it here and I now produce it and allow you to use it for the purposes referred to.

Q. 10. From what time to what time do the entries in this freight receipt-book extend?

A. From July 1, 1872, up to November 30, 1883. The last entries were made by me on last Saturday, before I left, for last month's work. I left the next day (Sunday) to come here to testify, and I brought the book with me.

Q. 11. Please state whether or not all the freight received at Wheeler, Indiana, over the Pittsburgh, Fort Wayne and Chicago railway, during the time from July 1, 1872, to November 30, 1883, inclusive, has been entered—or, rather, whether or not its receipt has been entered—in this freight receipt-book kept there at the station.

A. Yes sir; it has.

Q. 12. If during that time any freight has been received over that railway at the Wheeler, Indiana, station, consigned to Mr. Joseph Dit-

low, to whom you have already referred in your testimony, will you please point out on said receipt-book the entries of the receipt of such freight, in order that the examiner may copy them on to the record?

A. Yes, sir; here are the entries.

[*The entries are two in number, one dated September* 25, 1874, *and the other dated March* 30, 1877, *and are copied by the examiner upon a blank page taken from the back end of the receipt-book, which sheet is put in evidence as Exhibit Pittsburgh, Fort Wayne and Chicago Railway Freight Receipt-book.*"]

There are only two entries in the book relating to freight received at Wheeler station for Joseph Ditlow; I have examined the book carefully up to April, 1874, and can find no other entries. I will look from there on.

The first entry states that on September 25, 1877, on manifest No. 4864, and by car No. 655, there was received, for Joseph Ditlow, from Pittsburgh, some goods, the freight on which was ninety-four cents, and the charges sixty-five cents, the freight and charges amounting to one dollar and fifty-nine cents.

The second entry states that on March 30, 1877, on manifest No. 3260, dated March 26, 1877, by car No. 4114, there was received, for Joseph Ditlow, from Pittsburgh transfer station, goods, the freight on which was one dollar and sixty cents, and the charges eighty-six cents, which freight and charges amounting to two dollars and forty-six cents, were paid March 30, 1877.

Q. 13. Will you please explain what the charges on the books, under the heading of "charges," in these two entries mean?

A. The "charges" are the charges on the original shipment from the east to Pittsburgh transfer station, to which they were originally billed. The charges from Pittsburgh transfer station to Wheeler are entered under the heading "freight."

Q. 14. Then, if I understand you, goods are billed from the sending station to the Pittsburgh transfer station on one manifest, and from the Pittsburgh transfer station to Wheeler on another manifest; and the charge, which is entered on the first manifest as freight from the sending station to Pittsburgh, is carried over on the second manifest as "charges;" the cost of transportation from Pittsburgh to Wheeler being entered on the second manifest as "freight;" am I correct?

A. Yes, sir.

Q. 15. Then the fact that in both of these entries on your books, to wit: the entry of September 25, 1874, and the entry of March 30, 1877, "charges" are entered in addition to "freight," indicates that the goods referred to were not originally shipped from Pittsburgh to Wheeler, but from some point to Pittsburgh, and from Pittsburgh to Wheeler, does it not?

A. Yes, sir.

Q. 16. In the entry of September 25, 1874, I find that the date of the manifest is not given, or rather is indicated by the ditto marks to have been the same as the date of the receipt of the goods at Wheeler; so far as the book thus appears to show the date of the manifest, is that correct as it appears there, or is it an error—and if so, how do you explain it?

A. It must be an error, I think, for in making the ditto marks I generally do not put down the date of the manifest, but mark it as of the date of the receipt. The box, of course, must have been billed several days before it was received, as we never receive any freight from Pittsburgh on the same day on which it is billed.

Q. 17. Referring to that entry of September 25, 1874, was that entry made in that book on that day; and if not, how soon after?

A. I couldn't say whether it was made the same day the goods were received or not. We sometimes let the bills remain for several days before we copy them into this book. We have other books in which we copy the manifests daily. We always make this book up in a few days to keep as a record. This entry was entered in the book in the regular course of my business there at the station.

Q. 18. Is this last statement true of the entry of March 30, 1877, also?

A. Yes, sir.

Q. 19. You have just referred to the freight which was received at Wheeler station for Mr. Ditlow on September 25, 1874, as a "box;" as the freight receipt-book does not show whether it was a box or not, I infer from the fact that you speak of it as a box, that you have some personal recollection of the receipt of that particular freight for Mr. Ditlow; am I correct about that or not?

A. I think it was a box; I have some recollection about it; I am pretty positive it was a box—a sort of an old dry-goods box.

Q. 20. Have you any recollection as to who took that box away from the Wheeler station, or whose team was employed to take it away?

A. I have some recollection about it, but as to being positive about it, I hardly could; but I think Mr. Harmon Hardesty's team took it away; I think I am right about that, but I wouldn't state it positively.

Q. 21. Have you any recollection of talking to Mr. Joseph Ditlow at the time about the box and about what it contained?

A. I have a recollection that Mr. Ditlow told me that they expected a box, and that it had steel traps in it, and that he and his partner were going off up the Kankakee to trap that winter. I know he did go off, and I think it was about that time.

Recess until 2 P. M.

Q. 22. Do you remember who that partner was?

A. I remember the man, but I never got acquainted with him. He was around there a good while, but I never paid much attention to him, and never got personally acquainted with him. He worked for a man by the name of Port Congdon.

Q. 23. Do you know Mr. Joseph Ditlow's brother, Abraham Ditlow?

A. I do.

Q. 24. Was he the man that was partner of Joseph Ditlow at the time?

A. No.

Q. 25. A witness named Cyrus Kissinger testified in this case on behalf of complaintants, (see complainants' printed record, pp. 1463 to 1512, inclusive,) stating, among other things, that his age is thirty years; that in the spring of 1874 he and Joe Ditlow went out to Indiana and worked on a farm there, (see ans. 44, p. 1467;) that he worked for a gentleman called Port Congdon, whose post-office address was Wheeler, Porter county, Indiana, (see answers 117, 118, p. 1474;) that at that same time Joe Ditlow was hireling to Hiram Hardesty, who lived about two miles from Congdon's place, (see answers 119 to 121, p. 1474;) and that he, the witness, came home from that visit to Indiana, starting from Hobart, Indiana, on January 5, 1875, and getting hurt in a railroad accident about eight miles west of Fort Wayne, so that he was unable to reach home until sometime in May, 1875, (see answer 45, p. 1468.) The witness was a resident of Pennsylvania, and was acquainted with Joseph Ditlow before he went to Indiana, (see ans. 38, p. 1467, etc.) Can you tell me whether or not that man, Cyrus Kissinger, is the man you have referred to as Joseph Ditlow's trapping partner in the fall of 1874?

[*Objected to as not in rebuttal, as leading, argumentative, and calling for the deduction of the witness and not his recollection.*]

A. Yes; he was the man that I understood to be his partner at the time.

Q. 26. Several persons residing in the neighborhood of Wheeler, Indiana, have been brought on here to Harrisburg, during the present week, to testify in this case. Have you seen them since your arrival here, and are you personally acquainted with them?

A. I have, and I am personally acquainted with them all—have been for several years. Abraham Ditlow I have not been acquainted with only for the last year; the others I have been acquainted with a good while.

Q. 27. Please give me the names of the parties who are here from Indiana as referred to in my last question.

A. Harmon Hardesty and his wife and daughter, Alexander Milner, Budd Clifford—I think his name is C. B. Clifford, but we always call him Budd—Joseph Ditlow and his wife, and Abraham Ditlow; that is all.

Q. 28. Referring to Harmon Hardesty, his wife and daughter, Alexander Milner, and Budd Clifford—do you know what their general standing there in the community where they live is for uprightness, honesty, and truthfulness; and if so, what is it?

A. I know it to be good—number one, as far as that is concerned.

Q. 29. Do you know what the general standing of the Ditlow boys —Abraham and Joseph—and of Joseph Ditlow's wife is, out there in that community, so far as regards their character for honesty, respectability, and truthfulness?

A. Joseph Ditlow and his wife I know to be number one; and Abraham Ditlow—I have heard him very highly spoken of by people who were better personally acquainted with him than I was. I haven't known him much until within the last year or so.

Cross-examined by Mr. Storrow:

Cross-Q. 30. How long have you lived where you live now?

A. I have been there since 1864 or 1865; I think it was 1864.

Cross-Q. 31. Give me your recollection as to what you heard Joseph Ditlow say about Drawbaugh's talking-machine.

A. I heard him say that there was a man by the name of Drawbaugh getting up a talking-machine; that he was living close by him; he went on to tell me that he was getting up this talking-machine. The way he came to tell me this was that I was asking him where he was

from and about himself; and in the natural course of the conversation he told me this. I asked him what kind of a machine it was; he went on to explain it to me, but I don't remember what he said—it was something entirely new to me.

Cross-Q. 32. Did he tell you that he had seen it and talked through it?

A. No; he didn't tell me that he had talked through it—I don't think he did. He said he had seen it. He mentioned a couple of glass tumblers that he had attached to it by wires in some way—glass tumblers or bottles, or something of that kind; I don't recollect how he did explain it exactly.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 7th day of December, 1883.

FRED. M. OTT,
Examiner.

S. S. REED.

Mrs. ISABEL HARDESTY, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

I am the wife of Harmon Hardesty; I reside in Union Township, Porter county, Indiana, two miles from Wheeler Station on the Pittsburgh, Fort Wayne, and Chicago railroad.

Q. 1. The complainants last winter examined in their behalf a witness named Joseph Ditlow, (see pp. 958 to 967 complainants' printed record,) who testified, among other things, in substance, that his age was thirty years; his residence, Wheeler, Porter county, Indiana; his occupation, farming; and that he formerly worked for Harmon Hardesty, at Wheeler, five years; and that Daniel Drawbaugh once made him, as a part of a trapping-kit, a sheet-iron stove (see pp. 958, 959, 960.) Do you know that Mr. Joseph Ditlow? If so, when did you first become acquainted with him?

A. I know him. I first became acquainted with him in the spring of 1874.

Q. 2. Will you state how it happened that you made his acquaintance at that time?

A. He came there to work for Mr. Hardesty, my husband, on the farm.

Q. 3. He came there to work, if I understand you, in the spring of 1874?

[*Objected to as leading.*]

A. Yes, sir.

Q. 4. How long did he work there before he left you to do something else, and what did he do immediately after leaving you?

A. Five years he was there.

Q. 5. Do you remember what Joseph Ditlow did in the fall of 1874?

A. He trapped.

Q. 6. Did he trap alone or have a partner; and if he had a partner, who was it?

A. He had a partner, Cyrus Krissinger—that is his name aint it—I don't know whether that is his name or not.

Q. 7. Whom had this Cyrus Krissinger, or whatever his name was, been working for that summer before he and Joseph Ditlow went trapping together?

A. Mr. Porter Congdon.

Q. 8. How far did Mr. Porter Congdon then live from you, and was he a connection of yours; if so, what?

A. A mile and a half he lived from our house; he was my brother-in-law.

Q. 9. Last spring the complainants examined as a witness in their behalf a man named Cyrus Kissinger, who testified in substance, among other things, that his age was thirty years; that his general residence had been in Pennsylvania, (see page 1463, complainants' printed record;) that in April, 1874, he went to Indiana to work on a farm, and worked there for a gentleman named Congdon, about seven miles west of Fort Wayne, whose post-office was Wheeler, Porter county, and who lived about a mile and a half or two miles from Hiram Hardesty's place; and that Mr. Congdon had nobody hired on the place while he was there except himself, (see page 1474 complainants' printed record.) He also testified that he and Joseph Ditlow went out to Indiana in the spring of 1874; and that Joseph Ditlow was hired to Hiram Hardesty at the same time that he himself was hired to Port Congdon, (see page 1467, ans. 44, and p. 1474, ans. 113 to 122.) Is that the man who went trapping with Joseph Ditlow in the fall of 1874, or was it some other man?

A. Yes, sir; that is the man. But he made a mistake in saying that it was about seven miles west of Fort Wayne; he must have meant Val-

paraiso, on the Fort Wayne road, which is about seven miles from our place. Fort Wayne is as much as a hundred miles from there.

Q. 10. While Joseph Ditlow was working on your farm, did you ever hear him say anything about a man named Daniel Drawbaugh; and if so, when did you first hear him speak of Mr. Drawbaugh, and how happened he to speak of him?

A. I heard him speak of Mr. Drawbaugh in 1874. His box didn't come—or his kit as he called it—that had his stove in. He was making a great fuss about it and I asked him what was the reason he couldn't get a stove where he lived just as easy as to fetch that one from "Pennsyltuck"—as he called it. He said he wanted that stove because Mr. Drawbaugh made it for him; he said Mr. Drawbaugh was an ingenious man, who had been making a talking-machine, as he called it; and he wanted his stove. He said he had a talking-machine to talk through the house. That is just what he said about it.

Q. 11. What was he intending to do with that kit that he was making such a fuss about?

A. He was going a trapping.

Q. 12. Did the kit come afterwards?

A. Yes, sir.

Q. 13. Do you remember whether it came from Pennsylvania by railroad or not?

[*Objected to as leading.*]

A. Yes, sir; it came by railroad.

Q. 14. Do you recollect the fact of its coming to your house or not?

A. Yes, sir.

Q. 15. Do you remember whether or not Joseph Ditlow had a kit sent out to him from Pennsylvania at any other other time than in 1874?

A. Yes, sir; I think he had—in 1877 I think it was.

Q. 16. Do you remember in what part of 1877 it was?

A. I can't remember what part of 1877; it appears to me—no, I can't remember just what part of 1877 it was.

Q. 17. Then he had a kit shipped out to him on two different occasions while he lived at your place, did he?

A. Yes, sir.

Q. 18. And was it when he was expecting it on the first occasion or when he was expecting it on the second occasion that he had this talk with you about Mr. Drawbaugh's talking-machine?

A. On the first occasion.

Q. 19. You have testified that Joseph Ditlow went trapping in the fall of 1874 with Cyrus Kissinger; if you remember their starting off on that trapping excursion will you tell us how they went and who conveyed them or accompanied them, if anybody?

A. Yes, sir; me and my husband, Harmon Hardesty, and Porter Congdon, and his wife, took them part of the way; and my husband took them all the way. We took them in a wagon—took their trapping-kit—and carried them as far as my brother-in-law's, Mr. Harsh, about four miles above Valparaiso; and then my husband took them the balance of the way to the trapping grounds.

Q. 20. Has there ever been a man named Tompkins to your place in Indiana to see what you knew about the arrival of Joseph Ditlow's trapping-kit there?

[*Objected to as leading.*]

A. Yes, sir.

Q. 21. About when did Mr. Tompkins come to see you about it?

A. I think it was in May last sometime.

Q. 22. Did he come to your house to see you?

A. Yes, sir.

Q. 23. What questions did he first ask you, if any?

[*Objected to as immaterial.*]

A. The first question he asked me was if I wanted to go East.

Q. 24. Did he say what he wanted you to go East for? If so, what was it?

[*Same objection.*]

A. On the telephone, he said.

Q. 25. What did you say to him about going East in reply to that question of his?

A. I told him I wouldn't go.

Q. 26. What else did he ask you then, if anything?

[*Same objection.*]

A. He asked me what was the reason I wouldn't go.

Q. 27. What did you tell him?

[*Same objection.*]

A. I told him I didn't think he wanted me to go so far for what few words I had to say.

Q. 28. What did he say then?

[*Same objection.*]

A. He wanted to know what I knowed about it.

Q. 29. What did you tell him that you knew about it?

[*Same objection.*]

A. I told him that when Joe first fetched his box there he told that Mr. Drawbaugh had a talking-machine in the house that he talked through the house.

Q. 30. What did Tompkins say to that?

[*Same objection.*]

A. He asked me what part of the house he talked in.

Q. 31. What was your reply?

[*Same objection.*]

A. I told him I didn't know.

Q. 32. What else did Tompkins say or ask?

[*Same objection.*]

A. He wanted to know if it wasn't in 1877.

Q. 33. What did you answer?

[*Same objection.*]

A. I said it was whenever Joe's box first came, whenever that was.

Q. 34. What remark, if any, did Tompkins make to that?

[*Same objection.*]

A. He said: "That would be in 1874, then."

Q. 35. What, further, was said between you and him at that time?

[*Same objection.*]

A. He said, "Didn't I understand you it was in 1877?" I said, "1877, or 1874, or 1875, or 1876--whatever time it was when Joe's box came the first time." He said, then, he would go down and see Joe Ditlow. He then went away and did not come back again.

Q. 36. Were you present when Joseph Ditlow's trapping-kit arrived the first time and was opened?

A. No, sir.

Q. 37. Was your husband taken to Philadelphia last spring by any of the parties engaged in the telephone suit?

A. Yes, sir.

Q. 38. Do you know who got him to go to Philadelphia on that occasion?

A. Mr. Tompkins.

Q. 39. Was that the same time that Mr. Tompkins came there to get you to go East?

A. Yes, sir.

Q. 40. Do you remember how long your husband was gone on that trip to Philadelphia?

A. He wasn't at home--about five days, I think he said it was.

Q. 41. Will you please state whether Joseph Ditlow did, or did not, have any trapping-kit there at your place before that trapping-kit came in the fall of 1874?

A. No, sir; he didn't.

Cross-examined by Mr. Storrow:

Cross-Q. 42, (*de bene.*) Do you remember whether you ever said anything to Mr. Tompkins except what you have stated in this deposition?

A. No, I don't.

Cross-Q. 43, (*de bene.*) Do you remember whether he ever said anything to you except what you have stated in this deposition?

A. Yes, sir.

Cross-Q. 44, (*de bene.*) What was it?

A. He asked me if I ever heard Joe say anything about the telephone.

Cross-Q. 45. When did you come on here to testify, and who came with you?

A. On Tuesday night I got here; my husband, Mr. Hiram Hardesty, Joseph Ditlow and wife, Aleck Milner, Budd Clifford; my daughter, Salome Hardesty, and Abe Ditlow came with me. Mr. Reed did not come on that train.

Cross-Q. 46. Did they all come for the purpose of testifying in this case?

A. All but Joe Ditlow's wife.

Cross-Q. 47. How long before your husband came to Philadelphia last spring did you have any conversation with Mr. Tompkins?

A. He was there—when he was going to Chicago—he stopped at our place. When he came back from Chicago he stopped at Hamlet and got my husband and took him with him. My husband keeps a store at Hamlet, about thirty-two miles from Wheeler. Mr. Tompkins stopped at our place on his return from Chicago, and found that my husband was at Hamlet, and then went there after him.

Cross-Q. 48. Wasn't it in the latter part of April that your husband came to Philadelphia?

A. I thought it was in May.

Cross-Q. 49. Please state everything else that you remember that Joe Ditlow told you about Drawbaugh's talking-machine.

A. I don't know that he ever said anything else of it.

Cross-Q. 50. Did he ever speak to you about it but once?

A. That is all I remember until after they got to talking about it after he came out here to testify this last winter.

Cross-Q. 51. And you don't remember anything else that he told you at that conversation except what you have stated?

A. That is all.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 7th day of December, 1883.

FRED. M. OTT,
Examiner.

ISABELL HARDESTY.

Recess until 7 P. M.

SALOMA HARDESTY, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

I reside near Wheeler post-office, Porter county, Indiana.

Q. 1. Are you the daughter of Mr. Harmon Harderty and Mrs. Isabel Hardesty?

A. Yes, sir.

Q. 2. A man named Joseph Ditlow came on with you from Indiana to this place in the early part of the present week, did he not?

A. Yes, sir.

Q. 3. When did you first become acquainted with that Joseph Ditlow?

A. In the year 1874.

Q. 4. How did you happen to get acquainted with him then?

A. He came to work for my father.

Q. 5. While he worked for your father, did he live in your father's family?

A. Yes, sir.

Q. 6. You had an uncle, named Peter Congdon, who lived a mile or two from your father's residence, had you not?

A. Yes, sir.

Q. 7. A man named Cyrus Kissinger was examined last spring as a witness for the complainants in this case, and testified, among other things, that he worked for Port Congdon as a hired man in the year 1874, and that Joseph Ditlow was working for Mr. Hardesty at the same time (see complainants' printed record, p. 1474.) Were you acquainted with that Cyrus Kissinger while he worked for your uncle?

A. Yes, sir.

Q. 8. Do you know anything about his going on a trapping expedition at any time; and if yes, please state when that was.

A. Yes; it was in the fall of 1874.

Q. 9. Do you recollect anything about a trapping-kit coming at any time to your father's house? If so, whose trapping-kit was it, and when did it first come there?

A. It was Mr. Joseph Ditlow's; I think it first came there in the fall of 1874—in September.

Q. 10. Do you remember what that trapping-kit was packed in when it first came there?

A. Yes, sir; a chest that he had made on purpose for that.

Q. 11. Were you, or were you not, present when that box was opened on its first arrival at your father's house?

A. I was.

Q. 12. Do you remember who else was present at the same time?

A. Yes, sir; my father and some of my brothers—perhaps all of them.

Q. 13. Do you remember what was in the box when it was opened? If so, please state, so far as you remember.

A. Yes, sir; there was a stove, some steel-traps, and, I believe, some knives and forks, two plates, two cups and two saucers, and some other cooking utensils.

Q. 14. While Joseph Ditlow lived at your father's, did you or did you not ever hear him say anything about a man named Drawbaugh, an old neighbor of Ditlow's in Pennsylvania?

A. Yes, sir.

Q. 15. When did you first hear him speak of Mr. Drawbaugh, and what did he say about him at that time?

A. It was in 1874; he told us about him making his stove for him, and about him inventing a talking-machine.

Q. 16. How happened that conversation to arise?

A. We were all looking at him opening his box and taking the things

out, and he was telling us about the stove; and it so happened that he told us about the talking-machine.

Q. 17. Was that at the time when he opened the box on its first arrival there?

A. Yes, sir.

Q. 18. Did he say whether he himself had seen Mr. Drawbaugh's talking-machine or not?

A. Yes, sir, he said he had.

Q. 19. Did he say anything about where Mr. Drawbaugh's talking-machine was when he saw it, and how far it talked, or anything on that subject? If so, state as well as you remember what he said about it at that time.

[*Objected to as leading, and as calling for the witness' guess-work and not recollection.*]

A. He said it was in his shop, but he didn't say how far he talked with it.

Q. 20. Did he describe in what part or parts of the shop it was? If so, what did he say?

A. He said it was in the corner.

Q. 21. Is that all that he said about it? If not, what else did he say?

A. He said that he could talk up through the room.

Q. 22. Up to where?

A. Upstairs; he didn't say where, that I remember.

Q. 23. Your father is keeping store at Hamlet, Indiana, is he not?

A. Yes, sir.

Q. 24. Do you stay there with him most of the time, or with your mother at Wheeler?

A. I stay there at the store through the summer.

Q. 25. He makes his home at Wheeler, and goes back and forth, I suppose, does he?

A. Yes, sir; he stays down there through the week.

Q. 26. Did Joseph Ditlow's trapping-kit ever come out to your father's place in Indiana a second time? If so, when?

A. Yes, sir; in 1877.

Q. 27. Do you remember what time in the year 1877 it was?

A. No, sir; I don't exactly.

Cross-examined by Mr. Storrow:

Cross-Q. 28. Your mother is down at the store some, too, isn't she?

A. Yes, sir; she stays there through the winter, and in the summer when I am there she comes to see me occasionally.

Cross-Q. 29. Are any of your brothers at the store any?

A. Yes, sir; my oldest brother, Hamlin, stays there all the time, only when he goes home on a visit.

Cross-Q. 30. Where do your family stay when they are down at Hamlet?

A. At the store.

Cross-Q. 31. Does your father have a place to live in in the same building?

A. Not in the same building; the house is built right on to the store; it is attached to it.

Cross-Q. 32. How long has he been carrying on that store?

A. I don't know exactly, but I think about five years.

Cross-Q. 33. How many brothers have you got?

A. Six.

Cross-Q. 34. What are their names and ages?

A. I don't know as I could give their ages. The oldest is Hamilton —commonly called Hamlin—the next is John, next Harmon, next Schuyler, next George, and next Willie.

Cross-Q. 35. How old is Hamlin?

A. Hamlin is in his twenty-second year.

Cross-Q. 36. How old is Willie?

A. Indeed, I couldn't tell—about seven or eight, somewheres along there.

Cross-Q. 37. When is his birthday?

A. I don't know that.

Cross-Q. 38. Which of them is the next oldest to you?

A. Hamlin.

Cross-Q. 39. Did Joe Ditlow tell you whether he had heard talk through Drawbaugh's talking-machine himself?

A. No, sir; he did not.

Cross-Q. 40. Did he ever mention Drawbaugh's talking-machine on more than one occasion?

A. Yes, sir; I believe he did.

Cross-Q. 41. When was the other occasion?

A. One day in the basement at home.

Cross-Q. 42. When?

A. I couldn't tell exactly the time when, but it was pretty near the time he talked of it before—it was after, just after.

Cross-Q. 43. Did he ever tell you anything else that Drawbaugh had made?

A. No, sir; nothing that I remember.

Cross-Q. 44. Have you got any sisters?

A. Yes, sir.

Cross-Q. 45. What are their names?

A. There is only one; her name is Nancy Catharine.

Cross-Q. 46. Is she older than you?

A. No, sir; she is between George and Willie. She is the next to the youngest in the family.

Cross-Q. 47. How long did Joseph Ditlow live in your father's family?

A. Five years, off and on.

Cross-Q. 48. How far does he live from your house now?

A. About half a mile.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 7th day of December, 1883.

FRED. M. OTT,
Examiner.

SALOMA HARDESTY.

HARMAN HARDESTY, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

My age is fifty-three; residence, Wheeler, Porter county, Indiana—that is my post-office address; my occupation is farming and merchandise.

Q. 1. How long have you lived at Wheeler, Indiana?

A. Thirty-three years.

Q. 2. Did you at one time have in your employ as a farm-hand a man named Joseph Ditlow, from Pennsylvania?

A. Yes, sir.

Q. 3. When did he first begin to work for you, and how long did he work for you?

A. From the latter part of May, 1874, and worked five summer seasons successively.

Q. 4. While he worked for you, did you ever hear him say anything about an old neighbor of his in Pennsylvania named Drawbaugh? If so, in what year did you first hear him speak of Mr. Drawbaugh?

A. I heard him speak of him in the year 1874.

Q. 5. State the circumstances under which he first mentioned Mr. Drawbaugh to you, and what led to the conversation.

A. He was talking about trapping and so forth in the fall, and that led to the conversation that brought in the name of Mr. Drawbaugh.

Q. 6. How did that lead to a conversation about Mr. Drawbaugh?

A. He was telling me about him getting him to put him up a stove for trapping purposes—for cooking, and so forth.

Q. 7. Did Mr. Ditlow have that stove brought out to Indiana or not?

A. Yes, sir; it was brought out.

Q. 8. How was it brought from Pennsylvania to Wheeler?

A. It was shipped out as freight by the Pennsylvania railroad.

Q. 9. Who conveyed it from the railroad station at Wheeler to your house?

A. I did.

Q. 10. In what was it packed for shipment?

A. A pine box or chest.

Q. 11. Were you present when that box was first opened at your house?

A. Yes, sir.

Q. 12. What were the contents of the box so far as you remember?

A. A sheet-iron stove, three joints of pipe, a couple of plates, and cups and saucers, a small coffee-pot, a few steel traps, and some knives and forks.

Q. 13. Was this first conversation about Mr. Drawbaugh before or after the arrival of this box or trapping-kit at your house?

A. It was before.

Q. 14. After that first conversation about Mr. Drawbaugh, did you have any other conversation with Joseph Ditlow about him? if so, when was the second conversation about him, and how happened the subject of Mr. Drawbaugh to come up at that time?

A. I had another conversation. It came up when we were taking the box off, opening it up, and examining the articles that was in it.

Q. 15. What did Mr. Ditlow say about Mr. Drawbaugh during those two conversations, or either of them?

A. He said he was a very ingenious man; he told about his fixing up the stove for him; he said he had made a talking-machine by which he could talk through his buildings.

Q. 16. Did he say, at that time, whether or not he himself had seen Mr. Drawbaugh's talking-machine?

A. Yes, sir; he said he had seen it.

Q. 17. Did he at that time mention Mr. Drawbaugh's first name or not?

A. Yes, sir; he called him Dan.

Q. 18. Did he at that time try to give you any description of Mr. Drawbaugh's talking-machine? If so, how did he describe it?

A. Yes, sir; he gave me a kind of a description. He said there was an old tumbler at one end and an oyster can at the other end of the concern.

Q. 19. Have you ever seen any of Mr. Drawbaugh's talking-machines, or any of the exhibits in this case?

A. No, sir; I never seen any.

Q. 20. Have you ever seen any drawing or picture of them, or any of them?

A. Not unless I have seen them since I have been to town here.

Q. 21. What was the drawing in that you saw since you have been in town here?

A. I took up a pamphlet in Mr. Jacobs' office and saw some drawings to-day.

Q. 22. Has anybody ever given you a description of Mr. Drawbaugh's talking-machines at any times from the day when Joseph Ditlow described them to you in 1874 down to the present moment?

A. No, sir.

Q. 23. Then, so far as you have any knowledge of what Mr. Drawbaugh's talking-machines are, is that knowledge derived from Joseph Ditlow's description of them to you in 1874?

A. Yes, sir.

Q. 24. Did Mr. Ditlow tell you at that time what means were used for connecting the old tumbler at one end of the contrivance with the oyster can at the other end?

A. He said they were connected with wire.

Q. 25. Do you remember at what time in the year 1874 it was that that trapping-kit arrived at your house and was opened?

A. It was in October, along about the first of it.

Q. 26. What use, if any, was made of the trapping-kit that fall after it arrived at your house?

A. It was used for cooking and for keeping the tent warm.

Q. 27. Am I to understand you that it was taken off on a trapping excursion?

A. Yes, sir.

Q. 28. Who went on that trapping expedition that fall?

A. Cyrus Kissinger and Joseph Ditlow.

Q. 29. For whom had Cyrus Kissinger been working that summer before he went off on that trapping expedition with Joseph Ditlow?

A. With W. M. P. Congdon, commonly known as Port Congdon, or Porter Congdon; he was my brother-in-law. He died in the fall of 1879.

Q. 30. Where did Ditlow and Kissinger go to trap that fall?

A. On Crooked creek.

Q. 31. Does that empty into the Kankakee river?

A. Yes, sir.

Q. 32. By what conveyance did they go from your place to Crooked creek?

A. I hauled them up with a team—two horses and a wagon.

Q. 33. After they got through with their trapping expedition on Crooked creek did they bring the trapping-kit back to your house or not?

A. Yes, sir; they brought it back.

Q. 34. Was it ever afterwards shipped back to Pennsylvania or not?

A. Yes, sir; it was shipped back.

Q. 35. Who shipped it back to Pennsylvania?

A. I did.

Q. 36. Do you remember about when you shipped it back to Pennsylvania?

A. Yes, sir; I shipped it back in the latter part of September, I think, 1875.

Q. 37. Did it ever come out to Indiana again or not?

A. Yes, sir; it came out again.

Q. 38. When?

A. In the spring of 1877.

Q. 39. After the conversation which you and Joseph Ditlow had about Drawbaugh's talking-machine at the time when the box was opened at your house about the first of October, 1874, did Joseph Ditlow again speak of Mr. Drawbaugh's talking-machine or not?

A. Yes; he spoke again about it.

Q. 40. How long after the day when the box was opened, so far as you remember?

A. About a week or ten days afterwards.

Q. 41. Did he ever mention it again after that while he lived with you? and if so, give us an idea how frequently.

A. I don't know as I can think of any other time.

Q. 42. Were you at Philadelphia, Pennsylvania, last spring?

A. Yes, sir.

Q. 43. What did you go there for?

A. I went there as a witness.

Q. 44. Who took you there as a witness?

A. Mr. Tompkins.

Q. 45. As a witness for the Bell Telephone Company in this suit?

A. Yes, sir.

Q. 46. When you went to Philadelphia, did you go from Hamlet or Wheeler?

A. I went from Hamlet.

Q. 47. Your store is at Hamlet, is it not?

A. Yes, sir.

Q. 48. Did Mr. Tompkins give you time to go to Wheeler when he came for you, or did he take you immediately to Philadelphia?

A. No, sir; he didn't give me time to go to Wheeler; he took me off immediately.

Q. 49. When you got to Philadelphia, what hotel did he take you to?

A. The Lafayette.

Q. 50. Whom did you see and talk with there at the Hotel Lafayette?

A. Mr. Tompkins and Mr. Storrow.

Q. 51. Did they ask you any questions about what Joseph Ditlow had said to you regarding Drawbaugh's talking-machine, and when it was?

A. Yes, sir.

Q. 52. Did they ask you to sign a written statement of your recollection?

A. Yes, sir.

Q. 53. And did you sign one for them?

A. Yes, sir.

Q. 54. Who wrote that statement?

A. Mr. Storrow.

Q. 55. Who asked you the questions about your recollections?

A. The both of them asked me—Mr. Storrow and Mr. Tompkins, both.

Q. 56. Tell us all they said to you there at the Lafayette hotel, and all you said to them on the subject of your recollection, so far as you now remember.

A. I don't know as I could put it all together.

Q. 57. Well, put it together as well as you can.

A. They were anxious to have me fix the date about the arrival of Mr. Ditlow's trapping-kit at my place, and I made them a statement as near as I can recollect of about the time it arrived there.

Q. 58. Go on and tell us all that was said there so far as your recollect, and who said it.

A. I and Mr. Tompkins had quite a talk about the arrival of the kit and as to dates. His dates was that it arrived in 1877, and I wasn't in shape to know any difference at that time without reference to earlier dates at home. So the statement was made out about the trapping-kit arriving in 1877, and that that was about the first time I heard Joseph Ditlow mention Drawbaugh's talking-machine. That is about all.

Q. 59. After that statement was signed by you did you have any further talk with Mr. Tompkins at Philadelphia about dates or about the statement; and if so, what did you say to him?

A. I told him afterwards that I didn't think I was right. I had sketched it out on a piece of paper as well as I could to get at the dates; and he showed me the memorandum he had made of the arrival of that trapping-kit at Wheeler; I thought his'n was incorrect, but I didn't know whether mine was correct or not at the time without looking up some former dates of business that was transacted about that time. And he said if I found anything I should send him word.

Q. 60. Did all this happen at Philadelphia during your visit there last spring?

A. Yes, sir.

Q. 61. You say in your 59th answer that Tompkins showed you the memorandum he had made of the arrival of that trapping-kit at Wheeler; what year did his memorandum show as the date of its arrival?

A. 1877, I think—1877.

Q. 62. Did he tell you what he made that memorandum from, or where he got his information?

A. From a railroad receipt.

Q. 63. The complainants last winter examined Joseph Ditlow as a witness in their behalf, (see pp. 958 to 966, complainants' printed rec-

ord.) I now read you the 7th question and answer of Mr. Ditlow's said deposition, [reads it,] and wish to know if you are able to say whether that was the receipt that Mr. Tompkins referred to in that conversation or not?

A. I am under the impression that it was.

Adjourned until December 8, 1883, at 9 A. M.

December 8, 1883, 9, A. M.

Examination resumed.

Present, same counsel.

Examination of Harmon Hardesty by Mr. Hill continued:

Q. 64. You say that Mr. Tompkins, when you expressed to him your doubt about 1877 being the correct date of the shipment of the trapping-kit to Joseph Ditlow, requested you to write him if you obtained any further information on the subject. I infer from that, that you said something to him about looking into the matter when you got home; am I right or not?

A. Yes, sir; you are right.

Q. 65. After you returned home from Philadelphia, did you look up the matter further or not?

A. Yes, sir; I looked it up further.

Q. 66. What steps did you take to ascertain and verify the exact time when that trapping-kit was received at Wheeler, Indiana?

A. The first step I took I went to look up some business transactions I had in connection with getting the traps for Mr. Ditlow, which we got at Wilson & Sons' hardware store, Valparaiso. I found that they had no date of the bill, and I found nothing there. I then went to Hobart, Indiana, about four miles from Wheeler, to see Mr. Riffenberg; I had bought a pump from him the first year that Joseph Ditlow worked for me, and had given a note for the pump. That gave me the date of the first year that he worked for me. I then went to Wheeler and examined the record there of the Pennsylvania railroad company as to the date of the arrival of his trapping-kit there. That was in September 28th, 1874; I think that was the date it arrived there; it was the latter part of September, anyway. Those two dates fixed the year that he commenced working for me without any doubt.

Q. 67. Mr. Sidney S. Reed, the station agent of the Pennsylvania Railroad Company at Wheeler, Indiana, who was examined here as a

witness yesterday, produced, during his examination, the freight receipt-book of the Pennsylvania Railroad Company for their station at Wheeler, Indiana, which showed that on the 25th day of September, 1874, certain freight arrived at Wheeler by that railroad, consigned to Joseph Ditlow. Is that the book entry which you examined at the railroad station to ascertain when the trapping-kit arrived there?

A. Yes, sir; that is the book entry.

Q. 68. And was that freight, which arrived there September 25, 1874, the trapping-kit which you took from the railroad station to your house, and which was opened in your presence, as you have testified?

A. Yes, sir.

Q. 69. After you had thus satisfied yourself as to the true date of the first arrival of that trapping-kit at your place, and of Joseph Ditlow's conversation with you about Daniel Drawbaugh's talking-machine, did you communicate the facts to Mr. Tompkins as he had requested you; and if not, why not?

A. No, sir; I did not. I mislaid his address was one reason; and another thing, I didn't think it was of any importance at the time.

Q. 70. After that were you visited by anybody else on behalf of the Bell Telephone Company; and if so, by whom?

A. I would hardly say that I was visited by any one else, unless—I happened to be in Wheeler and met Mr. Comfort. I hauled him out to Mr. Ditlow's and back to the same place.

Q. 71. About how long was that after you had returned from Philadelphia?

A. Probably in the neighborhood of a month.

Q. 72. Did you tell Mr. Comfort at that time that you had ascertained that the date was in 1874 or not?

A. I think I did, for he was out hunting up the same thing.

Q. 73. Did he examine the railroad books at the Wheeler station?

A. Yes, sir.

Q. 74. Were you present when he examined the railroad book; or did you get your information from him, or from some one else as to his examing the railroad book?

A. I was not present; I got my information from him.

[*Answer objected to by Mr. Storrow, as the witness has no knowledge as to the alleged examination, and as the defendant's witness, Mr. Reed, should have been interrogated upon the subject.*

Complainants' counsel requests that Mr. Reed be recalled for the purpose.

Respondents' counsel says that he will recall Mr. Reed if he can be found in town, and that he did not know when Mr. Reed was on the stand that Mr. Comfort had been there to examine the railroad books; and that he considers the admission of Mr. Comfort, the complainants' agent for the purpose of making that examination of the railroad books, competent evidence of the fact of such examination.]

Q. 75. When and where did Mr. Comfort tell you that?

A. At Wheeler, in the railroad station there, on the same day that I took him out to Joe Ditlow's and back, as I have testified.

Q. 76. Did Mr. Comfort tell you then what he had found to be the date of the arrival of the trapping-kit at Wheeler?

A. Yes, sir; he said further that he had traced it from where it had started till it got there; that that was his business—tracing up that kit.

[*At this point Mr. Reed came in, having been sent for by respondents' counsel at the request of complainants' counsel, and the deposition of Mr. Hardesty was suspended for a few minutes, for the purpose of recalling Mr. Reed and examining him as to the visit of John C. Comfort to inspect the railroad books at Wheeler,* (*see page* 508,) *at the close of which the examination of Mr. Hardesty proceeded as follows:*]

Q. 77. Up to the time when you met Mr. Comfort at the railroad station at Wheeler, and took him to Joseph Ditlow's and back, had you or had you not been visited by anybody in the interest of Mr. Daniel Drawbaugh, or of the parties opposed to the Bell Telephone Company in this suit, to inquire what you knew about these dates?

A. No, sir; not up to the time of Comfort's visit.

Cross-examined by Mr. Storrow:

Cross-Q. 78. When did you reach Harrisburg?

A. Tuesday evening of this week.

Cross-Q. 79. Where have you been during the three days before you began to testify?

A. In town.

Cross-Q. 80. Have you been in Mr. Jacobs' office considerably?

A. No, sir.

Cross-Q. 81. You testified that the stove of Ditlow was used for keeping the tent warm. What tent?

A. Mr. Ditlow's tent.

Cross-Q. 82. Where did he get it?

A. It was made right there at my house.

Cross-Q. 83. Who made it?

A. My woman, Mrs. Hardesty, and under Mr. Ditlow's instructions.

Cross-Q. 84. When did you come to Philadelphia, as you have testified—what month?

A. In April.

Cross-Q. 85. Where did you first see Mr. Tompkins?

A. At my store in Hamlet.

Cross-Q. 86. When?

A. Along the first of April.

Cross-Q. 87. Do you recollect who was present?

A. Yes, sir.

Cross-Q. 88. Who was it?

A. My daughter and my son were both present.

Cross-Q. 89. Do you recollect of anybody else?

A. Yes, sir; I think there was some one else present.

Cross-Q. 90. What is your recollection as to who it was?

A. Peter Harness was present.

Cross-Q. 91. How long before you came to Philadelphia was this interview, according to your recollection?

A. About three hours before I started.

Cross-Q. 92. Please look at the paper I now show you, and tell me whether it is the statement written and signed at Philadelphia, as you have testified, and whether the signature is your signature.

A. Yes, sir.

Cross-Q. 93. The words, "read by me before signing," are in your handwriting, are they not?

A. Yes, sir.

[*Paper put in evidence as "Harmon Hardesty's Written Statement," as follows:*

I, Harmon Hardesty, state as follows:

I know Joseph Ditlow. He worked for me in 1873, 1874, 1875, 1876, 1877. He went east at various times for the winter. He went east in the fall of 1876, and came back to me in the spring of 1877. In that spring of 1877 he spoke to me about a machine he had seen at home which Drawbaugh had, to talk through. This was the first time he spoke of a talking-machine that I know of.

In January of this year, 1883, Joseph Ditlow and W. C. Tompkins came to my hou[illegible] and store at Hamlet, Stark county, Indiana. They asked us—my wife, my son Hamlin, and I—when it was that Joe first told us about Drawbaugh's talking-machine. We—that is, my wife, my son, and I—talked it over and then we all said that it was in the spring of 1877.

HARMON HARDESTY.

Read by me before signing."

[*Paper objected to as incompetent and immaterial.*]

Cross-Q. 94. Please read the last paragraph of it and tell me whether you now remember the fact of Mr. Tompkins coming to your store at Hamlet and seeing, you and talking to you, some three months before you came to Philadelphia.

A. Yes, sir; I think he did; him and Mr. Ditlow both was there.

Re-direct by Mr. Hill, de bene esse:

Q. Q. 95. It was immediately after the making and signing of this paper (Harmon Hardesty's written statement) that you expressed to Mr. W. C. Tompkins your doubt about the spring of 1877 being the first time when the trapping-kit arrived at your place in Indiana, was it?

[*Objected to as leading.*]

A. Yes, sir; and about the date of 1873; I had my doubts about that. In fact, I had heard a good deal of it, and had nothing to refer to.

Q. Q. 96. Was Mr. Storrow present when you expressed to Mr. Tompkins your doubts as to the correctness of the dates in the paper?

A. I rather think not.

Q. Q. 97. Was Mr. Storrow, at that time, still at the Lafayette Hotel?

A. I couldn't say whether he was or not. He was there when the paper was signed. It was signed in his room. This conversation with Mr. Tompkins, I think, took place in my room, the same evening.

Q. Q. 98. In your 95th answer you say you expressed a doubt to Mr. Tompkins about the date 1873 being correct. Did you mean that statement in the paper where it says Joseph Ditlow worked for you in 1873?

A. Yes, sir.

Q. Q. 99. From the latter part of the paper I understand that when Joseph Ditlow and W. C. Tompkins visited you in January, 1883, they

visited you at Hamlet, Stark county, Indiana, and not at Wheeler, Porter county, Indiana; am I right?

A. They visited me at Hamlet.

Q. Q. 100. Did you have any means at Hamlet for ascertaining the dates correctly?

A. No, sir.

Q. Q. 101. How long did they stay there with you on that occasion?

A. It was half after twelve when they came there, and they departed a little before four o'clock.

Q. Q. 102. How much of the time while they were there was spent discussing these matters referred to in the paper?

A. I couldn't tell you how much time.

Q. Q. 103. Was that the first time that you, your wife and son Hamlin were talked to about these dates by anybody?

A. It was the first time I was talked to about them. I don't know whether my wife and son were talked to, before or after. My son and daughter were there at the time.

Q. Q. 104. Did Ditlow and Tompkins have with them there any paper or memoradum showing any date?

A. Mr. Tompkins had a memorandum showing a date.

Q. Q. 105. Did he tell you what it was the date of? If so, what did he say?

A. Yes, sir; he told me it was the dates of Joseph Ditlow's years that he worked for me.

Q. Q. 106. Do you remember what years he had on his memorandum as the years when Ditlow worked for you?

A. The years as on that statement—1873, 1874, 1875, 1876, and 1877.

Q. Q. 107. At that interview at Hamlet, was anything said about that trapping-kit of Ditlow's?

A. Yes, sir; there was.

Q. Q. 108. What was said about it?

A. Well, we was all trying to fix up dates for the arrival of the kit there. We talked over the year it came in.

Q. Q. 109. Were Ditlow and Tompkins told at the time, that the conversation with Ditlow about Drawbaugh's talking-machine occurred when that trapping-kit first arrived at your place?

[*Objected to as leading.*]

A. We were talking about it at that time.

Q. Q. 110. What did you tell them about it?

A. I told them that I heard Joe telling about it when we were examining the stove, when it was first delivered there—first taken out.

Q. Q. 111. What did your wife and son tell them about it at Hamlet?

A. They told him they remembered of Joe's talking about Mr. Drawbaugh's talking-machine.

Q. Q. 112. Did they tell them that that was when the trapping-kit first come to your house, or not?

[*Objected to as leading.*]

A. My wife said it was before the trapping-kit came, that Joe talked about the talking-machine. But none of us had exact dates at that time. My son told Tompkins that he heard Joe talking about it the same time the box was opened.

Q. Q. 113. During that inverview at Hamlet, did Ditlow or Tompkins make any statement as to what date it was when the trapping-kit was first sent to Indiana?

A. They all thought it was sent in 1877 when it first arrived there.

Q. Q. 114. At that interview at Hamlet, who first suggested 1877 as the time when the box was first sent to Wheeler? Was it you or any of your family, or Ditlow, or Tompkins?

[*Objected to as leading.*]

A. Mr. Ditlow and Mr. Tompkins both. Ditlow said he had got a receipt for 1877, and Mr. Tompkins had a memorandum of it.

Q. Q. 115. And was it that fact that caused you, your wife and son to conclude that the time when Ditlow first talked about Drawbaugh's talking-machine was in 1877?

A. Yes, sir; it was from the inference that we drawed from that fact.

Q. Q. 116. Was your daughter Saloma present at Hamlet with yourself, your son and your wife, at the time that Mr. Ditlow and Mr. Tompkins were there?

A. No, sir.

Q. Q. 117. In your 103d answer you say that the time when Ditlow and Tompkins came to see you at Hamlet was the first time you were talked to about the dates, and that you don't know whether your wife and son were talked to before or after; and that your son and daughter were there at the time. I understand from your 116th answer that

your daughter was not present at the time; what was the fact about that?

A. My daughter was not present at the time Ditlow and Tompkins were there.

Q. Q. 118. Then, did you understand my 103d question as referring to the time when Ditlow and Tompkins were there at Hamlet? I will now read the question and answer to you, and ask you to explain what time you referred to in your answer when you stated that your son and daughter were present.

[*Objected to as leading.*]

A. My wife and son were there; my daughter was at the farm at that time.

Q. Q. 119. Do you remember what you meant when you said at the end of your 103d answer, "My son and daughter were there at the time?"

[*Same objection.*]

A. I thought the reference was to the last time Mr. Tompkins was there.

Q. Q. 120. Were your son and daughter there when Mr. Tompkins came to get you to go to Philadelphia?

A. Yes, sir.

Q. Q. 121. And the first time that you were talked to by anybody about the date when Ditlow mentioned Drawbaugh's talking-machine to you was when Ditlow and Tompkins visited you together at Hamlet, was it?

[*Same objection.*]

A. Yes, sir; that was the first time.

Q. Q. 122. Were you talked to again by anybody about the date, between that time and the time when Tompkins came for you to get you to go to Philadelphia?

A. No, sir.

[*At request of defendants' counsel, Mr. Storrow, complainants' counsel states that the visit of Mr. Hardesty to Philadelphia, about which he has testified, occurred in the month of April,* 1883, *while complainants were taking their testimony in reply, there, in this case, and shortly before its close.*]

Re-cross by Mr. Storrow:

Re-cross-Q. 123. While you were testifying last evening, you had

forgotten all about the visit of Mr. Tompkins and Mr. Ditlow in January last, had you not?

[*Objected to as improper cross-examination.*]

A. It had escaped my notice.

Re-cross-Q. 124. And you didn't remember it this morning until your written statement was shown to you, did you?

[*Same objection.*]

A. Yes, sir; I thought of it last night after I left the room here.

Re-re-direct by Mr. Hill:

Q. Q. Q. 125. This morning, in cross-examination, Mr. Storrow asked you questions 84, 85, and 86, which I now read to you [reads.] I now ask you to explain further those answers, in view of the fact which you have now testified to, that the prior visit of Mr. Tompkins and Mr. Ditlow occurred to your mind last night, after you left the witness-stand.

A. That is where I first seen him—both times.

Q. Q. Q. 126. In answer to Mr. Storrow this morning you said that you first saw him there along the first of April; when you gave that answer, did you correctly understand Mr. Storrow's questions, or did you fail to recall the visit of Mr. Tompkins and Mr. Ditlow some three months before the first of April?

[*Objected to as leading.*]

A. I failed to recall the visit of Ditlow and Tompkins.

Re-re-cross by Mr. Storrow:

Re-re-Cross-Q. 127. After the questions which Mr. Hill has just referred to, you testified, according to the answers 85 to 91 inclusive, which I will read to you [reads]; did you, or did you not, remember the visit of Mr. Tompkins and Mr. Ditlow while you were giving those answers?

A. I did not think about it.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 8th day of December, 1883.

FRED. M. OTT,
Examiner.

HARMON HARDESTY.

SIDNEY S. REED, *being recalled, saith:*

Examined by Mr. Hill:

Q. 1. Have you any recollection of a man named John C. Comfort coming to your railroad-office some time last spring or early in the summer, and being taken by Mr. Harmon Hardesty from the station out to Mr. Joseph Ditlow's and back?

A. I recollect of a man—I don't think he gave me his name, and I don't think I ever heard his name. There was such a man who came there and was taken by Mr. Harmon Hardesty to Mr. Joseph Ditlow's and back. When he came, he inquired for both of them. Mr. Joseph Ditlow, also, came along back with him. He inquired for and examined the book, which I produced in my former testimony here. I mean the railroad freight receipt-book.

Q. 2. Do you remember what entries in the book he was after, and what he found?

A. He was after the entry that was made in 1874; he found that record and took a copy of it from my railroad book—I mean the entry dated September 25, 1874, already testified to, relating to the receipt of Joseph Ditlow's freight.

Cross-examined by Mr. Storrow:

Cross-Q. 3. Had you hunted your book for that entry before that?

A. I think not before there was inquiries made about it; I don't know, but Mr. Ditlow had mentioned it I don't know whether that was before or after he came there—perhaps the same day. I don't recollect the particulars of that.

Cross-Q. 4. Do you recollect anybody else coming to have that entry hunted for, before Mr. Comfort and you found it out that day?

A. There was that one man—there was two inquiries made. It strikes me that there was two gentlemen came at different times and made the same inquiry; or whether they were both one man or not I can't recollect hardly.

Cross-Q. 5. Isn't this the fact, that you hunted for it with Mr. Comfort and found it, and that before that Mr. Joseph Ditlow had inquired about it, and you had hunted for him, but couldn't find it; and you told Mr. Comfort that you had previously hunted for it for Mr. Joseph Ditlow, but couldn't find it? Please give me your recollection about that.

[*Objected to as immaterial.*]

A. My recollection is that I told this gentleman that was looking for it that I would look for it, which I did and found it. I don't recollect telling him that Mr. Ditlow was there hunting for it. I knew there was an entry on the books all the time, and that I could find it, and I did find it. I will say, further, that Mr. Ditlow did come there one day and asked me to show him that entry; and I was busy at that time, as the trains were coming in; and I told him to come in some other time when I had more time and I would hunt it up for him. I think that was the conversation I had with Mr. Ditlow.

Re-direct by Mr. Hill:

Q. Q. 6. Mr. Harmon Hardesty has just testified that before this Mr. Comfort came there to examine the books he, Mr. Hardesty, had been there to examine the books, to satisfy himself about the date of the receipt of that box, and had found the entry of September 25, 1874, there. What, if any, recollection have you of Mr. Hardesty's examining the books?

[*Question objected to as leading and argumentative.*]

A. I have a recollection of Mr. Hardesty's coming there, and I showed him the book and the record of it.

Examination taken, reduced to writing, and by the witness subscribed to before me, this 8th day of December, 1883.

S. S. REED.

FRED. M. OTT,
Examiner.

[*At the request of complainants' counsel, who are unable to be here next week by reason of other engagements, the further taking of testimony in this case is postponed until Tuesday, December* 18, *at* 11, *A. M.*]

December 18, 1883, 11, *A. M.*

Examination resumed pursuant to adjournment.

Present, Mr. Howson for complainants, and Mr. Hill and Mr. Jacobs for respondents.

HAMLIN HARDESTY, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

My age is twenty-one; residence at Hamlet, Stark county, Indiana; I am now running a store for my father and baling hay.

Q. 1. Are you a son of Harmon Hardesty, who testified a while ago in this case?

A. Yes, sir.

Q. 2. Your father has a residence about a couple of miles from Wheeler Station, Porter county, Indiana, has he not?

A. Yes, sir.

Q. 3. A man by the name of Joseph Ditlow was examined last winter in this case as a witness on behalf of the complainants, (see complainants' printed record, pp. 958 to 966 inclusive,) and testified among other things that he worked for Harmon Hardesty at Wheeler, Indiana, five years. Do you know that Mr. Joseph Ditlow?

A. Yes, sir.

Q. 4. Were you living at your father's house when Joseph Ditlow worked there?

A. Yes, sir.

Q. 5. In what year did Joseph Ditlow first work for your father?

A. In 1874.

Q. 6. A man by the name of Cyrus Kissinger was examined in this case last spring as a witness for complainants, (see pages 1463 to 1512 inclusive,) and among other things testified (see answer 44, p. 1467, and also p. 1474, answers 113 to 122) that he and Joseph Ditlow went out to Indiana in the spring of 1874, in April; and he, Kissinger, worked that summer for a man named Port. Congdon, whose post-office address is Wheeler, Porter county, Indiana, while Ditlow was hired to Harmon Hardesty, who lived about two miles from Congdon's place. Did you know that Cyrus Kissinger when he lived in Indiana?

A. Yes, sir.

Q. 7. Is that Mr. Porter Congdon living or dead?

A. He is dead now.

Q. 8. What relation was he to you when he was living?

A. An uncle.

Q. 9. Do you remember what, if anything, Joseph Ditlow did that fall of 1874, after he had got through the farm work of the season for your father?

A. He went trapping.

Q. 10. Who, if anybody, went with him?

A. Cyrus Kissinger.

Q. 11. Do you remember where they got their stove, traps, and other utensils for that trapping expedition?

A. They got their stove, and what they called his "kit," from Pennsylvania.

Q. 12. Whose kit was it?

A. Joe Ditlow called it his own.

Q. 13. Do you remember how that kit went out from Pennsylvania to Wheeler?

A. By railroad as freight.

Q. 14. When it arrived at Wheeler, where was it taken from the railroad station?

A. To our place—Harmon Hardesty's.

Q. 15. Do you remember who went over to the railroad station to get it at that time?

A. Joe Ditlow, myself, and father was there.

Q. 16. Were you present at your father's place when that kit was first opened there, or not?

A. Yes, sir.

Q. 17. Was there or was there not any conversation there that day about the man who made Joe Ditlow's stove which came out with the kit?

A. Yes, sir.

Q. 18. What was said about him, and who said it?

A. They got talking about the kit not coming when it ought to, and Joe stated that Mr. Drawbaugh was the man who made the stove for him—being such an ingenious man; he had invented a talking-machine.

Q. 19. Did he state whether he himself had seen Mr. Drawbaugh's talking-machine, or not?

[*Objected to as leading and as inquiring for hearsay.*]

A. Yes, sir; he said he had seen it.

Q. 20. Did he tell you or your folks at that time where he had seen Mr. Drawbaugh's talking-machine, or how far it talked? If so, what did he say about it?

[*Same objection.*]

A. He had seen it in the shop, and it talked upstairs to the men. It would talk all over the room.

Q. 21. Was that day when the kit arrived by rail and was taken to your house the first time that you had heard Mr. Ditlow speak of Drawbaugh's talking-machine, or not?

A. No; I think I had heard him speak about it before.

Q. 22. After Ditlow and Kissinger got through with their trapping expedition that fall, what did they do with the kit?

A. It was left at our place.

Q. 23. Do you remember how long it remained there?

A. Till they went back East.

Q. 24. What was done with the kit then, when Ditlow went back East?

A. The kit went East, too.

Q. 25. Did the kit ever come out to Indiana again? If so, when?

A. It came out in 1877—was shipped out in 1877.

Cross-examination declined by Mr. Howson.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 18th day of December, 1883.

FRED. M. OTT,
Examiner.

HAMLIN HARDESTY.

ALEXANDER MILNER, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

My age is forty-seven; residence, Porter county, Indiana, about three miles south of Wheeler Station; occupation, farming.

Q. 1. A man named Abraham Ditlow was examined as a witness in this case last winter in behalf of the complainants, (see pages 967 to 974 complainants' printed record,) and testified among other things that his age was twenty-eight years; his residence Wheeler, Porter county, Indiana; that he is a brother of Joseph Ditlow, of Wheeler, Porter county, Indiana; and that he, Abraham Ditlow, first went West in the spring of 1876. Are you acquainted with those two Ditlow's—Abraham and Joseph?

A. I am, sir.

Q. 2. When did you first become acquainted with them?

A. In 1876 I became acquainted with Abraham; I became acquainted with Joseph in 1874.

Q. 3. How did you happen to become acquainted with Abraham Ditlow in 1876?

A. He worked for my brother-in-law, Porter Congdon.

Q. 4. Did he ever do any work for you, or under your charge? If so, what kind of work, and when?

A. In 1876 I was overseer of the roads—supervisor they called it—and he worked under me then in the spring of 1876.

Q. 5. Did you ever hear him mention the name of Daniel Drawbaugh? If so, when did you first hear him speak of Mr. Drawbaugh; how did the conversation arise; where did it take place, and what work was going on at the time, and what did he say about Mr. Drawbaugh at that time?

A. I have heard him mention the name of Daniel Drawbaugh; I first heard him mention Mr. Drawbaugh when he worked under me on the roads, in 1876; I think it was the last of May or fore part of June—along there. It was in the early part of the season. We got to talking about improvements—how much handier it was now than years back in doing labor; and about travelling, and handsome cars, and the like, and about the telegraph; and then he mentioned Mr. Drawbaugh's talking-machine. This conversation took place when we were working on the roads. I don't know that he said anything about Mr. Drawbaugh at that time, but that he had invented this talking-machine.

Q. 6. Do you remember whether or not he stated that he himself had seen Mr. Drawbaugh's talking-machine?

[*Objected to as leading.*]

A. Yes, sir; he said he had seen it.

Q. 7. Do you remember whether or not he mentioned any occasion on which he had seen Mr. Drawbaugh's talking-machine?

A. He told me he went down to see about getting a stove made for to go trapping with. He said that Mr. Drawbaugh told him that he had invented a talking-machine, and that he would go down below, and for him to stay up there, and he would talk to him. And after Drawbaugh started down, Abe Ditlow said he followed him down. He said after he got down there, he (Drawbaugh) asked him why he didn't stay up there. He said he thought he was just fooling him; that he didn't suppose he had any such thing as a talking-machine. Drawbaugh then called him up to a bench where he had it on, and told him to come, he would show him what he had; I don't recollect anything more that he said at the time, only that wires ran up through the floor. He showed him how it was run, but I forget how it was.

[*Answer objected to by Mr. Howson as hearsay and not evidence.*]

Q. 8. Did Abraham Ditlow say anything to you at that time, in the early part of 1876, about being fond of teasing Drawbaugh and getting him provoked at him, about the talking-machine?

[*Objected to as leading.*]

A. He said he was all the time joking about one thing or another, but not concerning—as I recollect—anything at that time.

Q. 9. Who do you mean was all the time joking?

A. Ditlow and Drawbaugh. Ditlow didn't suppose he had invented any such thing.

Q. 10. Do you mean, didn't suppose so when Drawbaugh first wanted to show it to him, or when Ditlow was talking to you?

[*Objected to as leading, calling for mere inference, argumentative, and incompetent.*]

A. I don't know which he meant; I suppose when he was inventing it, probably.

Q. 11. Are you giving Ditlow's exact words to you, or only the substance of the conversation so far as you remember it?

A. As near as I can remember what he told me.

Adjourned until December 19, 1883, at 10, A. M.

December 19, 1883, 10, *A. M.*

Examination resumed.

Present, Mr. Howson for complainants, and Mr. Jacobs for respondents.

Examination of Alexander Milner continued by Mr. Jacobs:

Q. 12. Was anything said in that conversation between you and Abraham Ditlow with regard to the patenting of Mr. Drawbaugh's talking-machine? If so, state what it was.

[*Objected to as leading, inquiring for hearsay, and incompetent.*]

A. I inquired of Abraham Ditlow if Dan Drawbaugh had a patent on his talking-machine, and he said he had not; that he was too poor to get one on it.

Cross-examination declined by Mr. Howson.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 19th day of December, 1883.

FRED. M. OTT,
Examiner.

ALEXANDER MILNER.

C. B. CLIFFORD, *being produced, sworn, and examined, saith:*

Examined by Mr. Jacobs:

My age is thirty-four; residence, Union township, Porter county, Indiana, about six miles from Wheeler; I am a farmer.

Q. 1. A man named Abraham Ditlow was examined as a witness on behalf of the complainants in this case last winter at Philadelphia, and testified among other things that his age was twenty-eight; residence was Wheeler, Porter county, Indiana; occupation, farming; and that he was a brother of Joseph Ditlow, who had also testified in the case on behalf of the complainants. Are you acquainted with the Abraham and Joseph Ditlow just mentioned?

A. Yes, sir.

Q. 2. When and where did you become acquainted with Abraham Ditlow?

A. I got acquainted with Abraham Ditlow in 1876, when he was working for Port. Congdon on a farm; it was in the spring of the year.

Q. 3. How did you come to make his acquaintance?

A. My father-in-law and me rented forty acres of ground for corn, on Port. Congdon's farm.

Q. 4. Was that at the same time Abraham Ditlow was working for Port. Congdon?

Q. 5. How long did he work for Port. Congdon?

A. This I could not tell; I suppose about six or eight months.

Q. 6. How many seasons?

A. The only season that I know of.

Q. 7. Whilst you were working that corn ground, were you accustomed to go to Port. Congdon's house much?

A. Yes, sir.

Q. 8. Did you ever hear Abraham Ditlow mention the name of Daniel Drawbaugh? If so, when did you first hear him mention it? In what connection; and what did he say about Mr. Drawbaugh?

A. He said in 1876—that was the time he was there—that there was a man in the East who had invented a talking-machine. He called his name Daniel Drawbaugh.

Q. 9. What did he say about Mr. Drawbaugh's talking-machine?

[*Objected to as inquiring for hearsay.*]

A. He said that he could talk through the shop with it.

Q. 10. Did he say whether or not he had seen it himself?

[*Same objection, and objected to as leading.*]

A. He had.

Q. 11. Did he or not describe it to you, or any part of it?

[*Same objection.*]

A. All that I can remember of his describing it—there was a glass tumbler attached to one end of it.

Q. 12. Did he or not tell you, or in any way give you to understand, when he had seen it?

[*Same objection.*]

A. By the way he told it, he had seen it some time before that; but he didn't say any certain time.

Q. 13. Was there on that occasion anything said by Mr. Ditlow about Drawbaugh taking out a patent on his talking-machine? If so, what did he say?

[*Same objection.*]

A. He said when he left there he told Dan that he hoped he would get a patent on it, for he thought there was money in it for him.

Q. 14. Did he or not tell you of any reply that Mr. Drawbaugh made to that remark?

[*Same objection.*]

A. He said he told him that he was too poor; that he couldn't get it done.

Q. 15. At what time of year was this conversation between you and Abraham Ditlow?

A. It was in 1876, sometime about the last of May, or in June sometime.

Q. 16. What work were you doing about that time?

A. Plowing corn.

Q. 17. Did you ever rent ground for corn on Port. Congdon's farm in any other year?

A. No, sir.

Q. 18. In the course of that conversation with Abraham Ditlow, did he tell you of any other things that Daniel Drawbaugh had made or invented?

A. He told me that he had invented clocks, and had made a stove for them that they used for trapping.

Q. 19. Did you ever have any other conversation with Abraham

Ditlow about Daniel Drawbaugh's talking-machine prior to the time he went to Philadelphia to testify, in December, 1882?

A. No, sir.

Cross-examination declined by complainants' counsel.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 19th day of December, 1883.

FRED. M. OTT,
Examiner.

C. B. CLIFFORD.

Adjourned until December 20, 1883, at 4, A. M.

December 20, 1883, 4, *P. M.*

Examination resumed pursuant to adjournment.

Present, Mr. Storrow and Mr. Howson for complainants, and Mr. Jacobs for respondents.

JOHN F. RUPP, *being produced, affirmed, and examined, saith:*

Examined by Mr. Jacobs:

Q. 1. You are the same John F. Rupp, are you not, who testified on behalf of the respondents in this case, on the 16th of May, 1881? (See printed record, defendants case, p. 324, *et seq.*)

A. Yes, sir.

Q. 2. You stated to me some time ago that you wished to correct an error in your former deposition; will you now please state what that error was, and what correction you wish to make?

A. I said the school-board was having new desks put into the school-room on the day I visited Gorgas' school and Daniel Drawbaugh's shop, in company with Mr. Daniel A. Hamacher, Sol. S. Rupp, F. E. Shank, David C. Rupp, and a number of others—I can't just name them—there being no school in our school-house, the Frogtown school-house. I wish to correct the occasion of there being no school. The snow blew into the loft of the school-house and melted, wetting the ceiling, and the water dropping down made it unfit to have school in the building. We then decided to visit Gorgas' school and to go to Drawbaugh's shop, which we did on that day. This was February the first, 1876. Mr. Hamacher, and a number of others and I were down to Gorgas' school the time the desks were put into our school-room—the Frogtown school.

Q. 3. When was that?

A. January 4, 1875.

Q. 4. Have you any means of fixing that date accurately?

A. I have it noted in my diary of 1875.

Q. 5. Will you please produce your diary and point out the note of it to the examiner, in order that he may make a copy of it upon the record?

[*Diary and entry objected to as not evidence.*]

A. Yes, sir; here it is.

Witness produces diary, in which, under date of Monday, January 4, 1875, appears the following entry:

"Clear west wind. 18° to 38°
Supervisors laying road tax in office.
Visiting the schools (stone church and Gorgas's)."

Q. 6. When was that entry made, and by whom?

A. On the evening of the same day by myself.

Q. 7. Upon the book of the teachers' monthly reports for Cedar Spring School No. 2, in Lower Allen district, Cumberland county, Pa., in the report for the lunar month ending January 20, 1875, I find among the visits paid the following on January 4: "Mr. Hamacher, Tea., Mr. Rupp, Mr. Rupp, Mr. Shank, Mr. Rupp, Mr. Bitner, Mr. Bitner. Are you one of the Rupp's there mentioned?

A. I was there on that day, and there were three Rupp's in the party visiting, and I was one of them; so one of the names must be for me.

Q. 8. Who was the teacher at Gorgas' school-house when your party visited it, January 4, 1875?

A. Mr. Eichelberger—John, I think.

Q. 9. Did your party, or did you at that time, go to Mr. Drawbaugh's shop?

A. No, sir; none of us were there.

Cross-examined by Mr. Howson:

Cross-Q. 10. You have named in your testimony a Mr. F. E. Shank as one of the parties who went with you to Gorgas's school in February, 1876, and the name of Mr. Shank appears among those who are stated to have visited said school-house in January, 1875. Can you tell us whether it was one and the same Mr. Shank who participated in both of these events; and if yes, where he is now living?

A. It is the same Mr. Shank, and he is now living with his father,

A. B. Shank, in Frogtown. A. B. Shank is constable for Lower Allen township, Cumberland county, Pa.

Examination taken, reduced to writing, and by the witness affirmed and subscribed to before me, this 20th day of December, 1883.

JOHN F. RUPP.

FRED. M. OTT,
Examiner.

DANIEL A. HAMACHER, *being produced, sworn, and examined, saith:*

Examined by Mr. Jacobs:

Q. 1. You are the same Daniel A. Hamacher who testified on behalf of the defendants in this case in May, 1881, (see printed record, defendants' case, p. 302, *et seq.*,) are you not?

A. I am.

Q. 2. You some time ago pointed out to me an error in your former deposition, and stated that you wished to correct it. Will you now point out to the examiner that error, and make any correction you may see fit?

A. I stated that on the last of January and the first of February there was new furniture being put in the Cedar Run school, in which I taught, in Lower Allen township. I find that I was mistaken. The desks were put in the school-house in the year 1875, and at that time we visited the Gorgas school-house, when Mr. Eichelberger taught. I think that corrects the mistake.

Q. 3. By "we" whom do you mean?

A. A number of my pupils and myself.

Q. 4. Did you and your pupils at the time you visited the Gorgas school-house, where Mr. Eichelberger taught, in 1875, also visit the shop of Daniel Drawbaugh at Eberly's Mills, or not?

A. We did not.

Q. 5. Then we are to understand, are we, that you and your pupils made two visits to the Gorgas school-house, once in 1875, when Mr. Eichelberger taught there, and again in 1876, when Mr. Strong taught there?

A. Yes, sir.

Q. 7. I find upon the book of teachers' monthly reports for Ceder Spring School No. 2, Lower Allen district, Cumberland county, Pa.,

which I now produce, the report of John J. Eichelberger, teacher of said school, for the lunar month ending January 20, 1875; and among the visits recorded for said month visits by the following, on January 4: "Mr. Hamacher, Tea., Mr. Rupp, Mr. Rupp, Mr. Shank, Mr. Rupp, Mr. Bitner, Mr. Bitner." Can you tell us who they were?

A. Mr. John F. Rupp, Mr. D. C. Rupp, Mr. Forrest Shank, Mr. E. H. Bitner. I can't remember of any Bitner but Ellsworth being along. They were pupils with me. The Mr. Hamacher named there is myself.

Q. 7. Do you now remember how you and your pupils came to make the 1876 visit to the Gorgas school-house while Mr. Strong taught there?

A. By way of explanation, I think in my evidence on page 302, answers Nos. 6 and 7 explain why we went to Mr. Strong's school.

Q. 8. Was there any particular reason for your being absent from your own school on that day?

[*Objected to as leading and as incompetent in view of the last answer.*]

A. My room was not in condition for pupils to be in.

Q. 9. Why not?

A. If my memory serves me right, the snow had blown in through the roof of the building and melted, and the water dripped through the ceiling.

Cross-examined by Mr. Howson:

Cross-Q. 10. On the second day of your former examination as a witness for respondents in this case, (see p. 313, printed record defendants' case,) you produced a record-book, which you stated that you had that morning procured from the secretary of the school-board of Lower Allen township. Recently there has been examined as a witness for respondents in rebuttal one William H. Zearing, who testified (see cross-answers 92 to 99 both inclusive, pp. 133 and 134 defendants' printed rebuttal record) that he has been secretary of the Lower Allen school district since 1879; that as such the books and records belonging to that district have been in his possession; that among them is one containing the minutes of meetings of the school-board during the years 1874 and 1875; that he is personally acquainted with yourself; that he remembers your stating to him that you were at that time testifying in this case, and wanted to look at the books and records in his possession; that you looked at the report-books belonging to Nos. 2 and 3 schools, and also at the minute-book; and that after looking at these books, you borrowed and took away with you one report-book only. Are those

statements of Mr. Zearing, so far as they relate to yourself, substantially correct and true?

[*Objected to as irrelevant, immaterial, and not proper cross-examination.*]

A. To my recollection they are.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 20th day of December, 1883.

FRED. M. OTT,
Examiner.

D. A. HAMACHER.

Adjourned till December 21, 1883, at 10, A. M.

December 21, 1883, 10.30, A. M.

Examination resumed.

Present, Mr. Storrow and Mr. Howson for complainants, and Mr. Hill and Mr. Jacobs for respondents.

JOSEPH DITLOW, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

Q. 1. Are you the same Joseph Ditlow who testified last winter on behalf of complainants in this case, and whose testimony is printed in complainants' printed record, pp. 958 to 966 inclusive?

A. Yes, sir.

Q. 2. In that deposition, the 31st question and answer, on page 961, are as follows:

"*Q.* 31. Where, and from whom, did you first hear that Daniel Drawbaugh had a talking-machine, or anything that was claimed to be a talking-machine?

"*A.* In the Milltown store; from George Drawbaugh."

You have had nearly a year's time for reflection upon the subject, and for refreshing your memory; and I will now put to you the same question: Where, and from whom, did you first hear that Daniel Drawbaugh had a talking-machine, or anything that was claimed to be a talking-machine?

A. In the Milltown store; from George Drawbaugh.

Q. 2. When did you first hear that Daniel Drawbaugh had a talking-machine?

A. I can't fix no date when I first heard of it.

Q. 3. In your former deposition you stated that the time when George Drawbaugh first told you about it was in the winter, between the fall of 1876 and the spring of 1877, and that Jerry Fry kept the store at that time; what have you now to say on those points?

A. I am satisfied that it wasn't correct; that I heard of it and saw it before that time.

Q. 4. Have you any impression or recollection in your mind as to how long before that time you knew of Mr. Drawbaugh's having a talking-machine?

[*Objected to as calling for the witness' mere guess-work.*]

A. No, sir; I can't fix no date.

Q. 5. Mr. S. S. Reed, who was examined here a few days ago as a witness on behalf of defendants, testified in substance that you told him about Mr. Drawbaugh's talking-machine at Wheeler, Indiana, in the early summer of 1870. Have you any personal recollection of that conversation with Mr. Reed?

[*Objected to as leading.*]

A. No, sir.

Q. 6. Did you board with Mr. Reed in the early summer of 1870?

A. Yes, sir.

Q. 7. From your knowledge of Mr. Reed as a man, growing out of your personal acquaintance and relations with him, what is your opinion and belief as to the correctness of his statement that you told him about Mr. Drawbaugh's talking-machine in the early summer of 1870?

[*Objected to as leading and as incompetent.*]

A. I am satisfied he is correct.

Q. 8. Several members of Harmon Hardesty's family have testified that you told them about Mr. Drawbaugh's talking-machine in the fall of 1874, at Wheeler, Indiana. What is your opinion and belief as to the correctness of their testimony on that point?

[*Same objections.*]

A. I am satisfied they were correct.

Q. 9. When you returned from Philadelphia last winter, after testifying there for the complainants in this case, who first called your attention to the erroneous character of your testimony at Philadelphia?

[*Complainants object to the assumption that there was anything erroneous in the witness' testimony at Philadelphia.*]

A. My sister, Mrs. Evans.

Q. 10. Who first came to see you in Indiana on behalf of the Bell Telephone Company with reference to your testifying for that company in this case?

A. Mr. Comfort and Mr. Storrow.

Q. 11. Who was present at the interview?

A. My brother Abraham Ditlow, and my wife.

Q. 12. Did the interview first take place at your house?

A. Yes, sir.

Q. 13. Where did you go from your house?

A. To Wheeler.

Q. 14. Who went to Wheeler beside yourself?

A. Mr. Storrow, Mr. Comfort, and my brother Abraham.

Q. 15. After you four got to Wheeler station, did Mr. Storrow and Mr. Comfort exhibit to you any talking-machines?

A. Yes, sir.

Q. 16. When they exhibited them there to you, did you or your brother point out any of their machines as having been seen by him or you before, or as looking familiar to either of you?

A. Yes, sir; my brother did.

Q. 17. What did Mr. Storrow or Mr. Comfort say when your brother did so?

A. Mr. Comfort said that he never saw them at that time at Drawbaugh's shop.

Q. 18. When you were at Philadelphia for the purpose of giving your deposition, last winter, did you have frequent talks with Mr. Comfort and Mr. Storrow about the matters which you were to testify to?

A. Yes, sir.

Q. 19. Did you get any instructions from them as to how you were to give in your testimony? If so, what?

A. Yes, sir; we were trying to fix dates; he would ask me questions about dates; I couldn't remember; I could guess at it, so and so. He told me when I went on the stand not to guess at it—give a straight answer.

Q. 20. What do you mean by "a straight answer?"

[*Objected to as asking for the witness' opinion.*]

A. Not to say "I believe it was so, or I think it was so," but to say it either was so or was not so.

Q. 21. While you were there at Philadelphia, did or did not Mr. Comfort prepare for you a written memorandum of dates?

A. Yes, sir; he did.

Q. 22. What did he tell you to do with it?

A. He told me to read it over and study it, so that I will have it by heart.

Q. 23. Do you know George W. Mumper, who testified for the complainants last winter at Philadelphia?

A. Yes, sir.

Q. 24. Did you see him after your return from Philadelphia, at the end of your testifying?

A. Yes, sir.

Q. 25. Did you have any conversation with him at that time about Mr. Drawbaugh's invention of the talking-machine?

A. Yes, sir.

Q. 26. Who was present?

A. Mr. John Free and my brother Abraham.

Q. 27. What did Mr. George W. Mumper say at that time about Drawbaugh's talking-machine?

A. He says, "Well, you are in this telephone scrape;" I says, "Yes, sir;" he says, "How do you think its going to go?" I told him that I thought Daniel Drawbaugh would win it. He said, "I think so;" that he had it in 1874.

Cross-examined by Mr. Storrow:

Cross-Q. 28. Where was this talk with Mr. George W. Mumper, which you have undertaken to relate?

A. In his barnyard under the over-shot, close to his cow-stable door.

Cross-Q. 29. When was it?

A. Last winter when we were in here after we came from Philadelphia, just before I went back to Indiana.

Cross-Q. 30. How long did you stay in Cumberland county before you went back to Indiana last winter?

A. I was absent from my home fourteen days.

Cross-Q. 31. Please think that over a little more carefully. Didn't you get home on the 12th of January?

A. I couldn't say what date it was when I did get home. All I know is that I had a man hired, and he had one day more charged to me than I was gone. I had hired him to do my work while I was

away. I think he had fifteen days against me, and I think it was only fourteen days that I was gone.

Cross-Q. 32. Have you any memorandum that fixes the day when you got home?

A. I can't fix no date, but the day after I got home Mr. Tompkins came out after me again.

Cross-Q. 33. I understand you that the conversation with Mr. Mumper was just before you left Cumberland county to go home, in January last, and during the latter part of your visit here. Is that the fact?

A. Yes, sir.

Cross-Q. 34. State everything else you remember that passed at that conversation.

A. He brought out of the stable a large horse, and told us that he expected a buyer after the horse that evening. Then we went in to supper. He hauled us to New Cumberland. He went to Ross' mill, just across the creek, below New Cumberland, and me and my brother Abraham went to my brother Emanuel's and stayed all night.

Cross-Q. 35. You have been examined about some conversation you had with Mr. Storrow at Philadelphia last winter with reference to some dates. The dates that were particularly referred to in that conversation were dates of the particular places and persons at and for whom you worked during the last ten or fifteen years, were they not?

A. Yes, sir.

Cross-Q. 36. Mr. Storrow cautioned you that upon the stand you should not guess, nor say you guessed, but should answer positively one way or the other, if you knew; and if you didn't know, say that you didn't, and not guess about it. Is not that the fact?

A. Yes, sir.

Cross-Q. 37. The dates on the paper, which you say Mr. Comfort gave you last winter, were dates of the different places you worked at, were they not?

A. Where I worked at and trapped in winter time.

Cross-Q. 38. Do you know what time of the year it was when Mr. Comfort and Mr. Storrow came to see you at Wheeler, and had the interview you have testified about in this deposition?

A. The nearest I can come at it is that it was in corn-planting time, which is along in the last of May, or June.

Cross-Q. 39. Do you remember where you were and what you were

doing when Mr. Comfort and Mr. Storrow first saw you, in the early part of June, 1882, on the visit you refer to?

A. Yes, sir.

Cross-Q. 40. Where and what?

A. It was on Mr. Clements farm, which I hired, and where I live. I had unhitched for dinner and was going towards the house when they came down the railroad.

Cross-Q. 41. All of you sat down on the porch in front of your house and talked awhile before dinner, did you not?

A. Yes, sir.

Cross-Q. 42. After some general talk about Milltown and the neighborhood, you and your brother were asked what you had ever seen at Dan's shop, and you and he enumerated a number of things that you remembered to have seen there, did you not?

A. Yes, sir.

Cross-Q. 43. You did not name the talking-machine among them; and then you and your brother were asked if you had ever seen any talking-machines there, and you both said, "No, never," but that you both once heard of them. Is not that the fact?

A. No, sir.

Cross-Q. 44. You and your brother then said that you went to Milltown after the harvest of 1876, and spent the winter there; and while at home that winter you heard George Drawbaugh speak of them. Is not that the fact?

A. I don't remember of saying anything there about it.

Cross-Q. 45. You also said that after dinner down at the railroad station, did you not?

A. I can't remember that no more.

Cross-Q. 46. You and your brother said at the railroad station to Mr. Storrow and Mr. Comfort that you came East in the fall of 1876, after harvest, and intending to get East in time for corn-husking; and that you thought you could tell the exact time by going over to the man you then worked for. Is not that the fact?

A. Yes, sir.

Cross-Q. 47. And a few days afterwards you did go over to Harmon Hardesty's to ascertain just when it was that you came East in the fall of 1876; did you not?

A. I don't remember right no more, but I think I did.

Cross-Q. 48. You went over on a Sunday to see him about it, didn't you?

A. I don't remember whether I did or not.

Cross-Q. 49. And when you saw him about it, you told him why it was you wanted to know, did you not?

A. I can't remember nothing about that no more.

Cross-Q. 50. Do you remember whereabouts it was that Mr. Storrow and Mr. Comfort showed you and your brother the instruments at Wheeler that day?

A. Yes, sir.

Cross-Q. 51. Where?

A. Right across the railroad. I think there was freight-cars standing there—right back of them.

Cross-Q. 52. Sitting on some boards, in the shade of a pile of lumber, wasn't it?

A. Yes, sir; I think there was lumber there.

Cross-Q. 53. The instruments were taken out of a box, and you and your brother looked at them and handled them; and you spent quite a while there, did you not?

A. Yes, sir.

Cross-Q. 54. While looking at them, your brother Abe said that he had never seen instruments like those, but he thought he had seen some parts or pieces of such instruments lying around in the shop. Is not that the fact?

A. I think he pointed to one instrument, with some spools on, and he said he believed he had seen it; and that magnet we both seen.

Q. 55. The machine he pointed at had a large magnet on, had it not, besides the spools?

A. I don't remember no more, but it seems to me there wasn't any on it.

Cross-Q. 56. How soon after testifying at Philadelphia did you see your sister, Mrs. Mary Evans?

A. The next day after I came from Philadelphia.

Cross-Q. 57. You finished testifying at Philadelphia on Saturday, December 30, 1882; was it on Sunday that you saw your sister?

A. Yes, sir.

Cross-Q. 58. What train did you go West by last January?

A. I don't know.

Cross-Q. 59. What time of day did you leave Harrisburg to go West?

A. I don't remember any more. I was stopping at George Free's, and I missed one train that I was going on.

Cross-Q. 60. I wish you would think over again, carefully, the conversation which was had on the porch of your house in June, 1882, and see if you don't remember that the first mention of talking-machine was in a question by Mr. Comfort or Mr. Storrow, as to whether you or your brother had seen any at Drawbaugh's shop?

A. I say it wasn't.

Cross-Q. 61. You have stated that you missed the train that you meant to go by; where were you when you missed that train?

A. At Mr. George Free's.

Cross-Q. 62. Did you come over to Harrisburg meaning to take it, and find that you were too late?

A. No, sir; my brother and me came to Harrisburg. I went and got my ticket and asked the train time. It was a good while yet till the train went, so we went to George Free's, and that is the way I missed the train.

Cross-Q. 63. Where is George Free's?

A. He lives here in Harrisburg.

Cross-Q. 64. Whom did you see at George Free's?

A. His wife, and two children, and himself.

Cross-Q. 65. Did you not miss a second train that day?

A. Yes, sir.

Cross-Q. 66. Where were you when you missed the second train?

A. With George Free; I went into the lower end of the depot just as the train was going out of the upper end.

Cross-Q. 67. Is that the same George Free who testified for the defendants. [See page 505.]

A. Yes, sir.

Recess until 2.30, P. M.

Cross-Q. 68. You have spoken of Mr. Tompkins coming to see you in the West after you went back last spring; where was it he found you?

A. He found me up at my father-in-law's, about a mile and a quarter from Wheeler station.

Cross-Q. 69. That was on a Friday, was it not?

A. I don't remember what day.

Cross-Q. 70. After testifying at Philadelphia last winter, you left there on Saturday, December 30, and on Sunday, December 31, you were at your sister's, Mrs. Jacob Evans, were you not?

A. Yes, sir; I was there on Sunday.

Cross-Q. 71. When did you leave your sister's, and did your brother Abe stop there and leave at the same time you did?

A. I don't know when I did leave. I was there several days.

Cross-Q. 72. Were you at Milltown during that week?

A. Yes, sir.

Cross-Q. 73. How many times?

A. Only once, I think.

Cross-Q. 74. Didn't you go there Thursday, and go to Daniel Fettrow's house?

A. No, sir; I don't think I went there Thursday; but I was to Daniel Fettrow's house.

Cross-Q. 75. You were there again Saturday and Saturday night, were you not?

[*The assumption implied in the word "again" objected to as unwarranted by the testimony.*]

A. Yes, sir; I was there on Saturday and Saturday night.

Cross-Q. 76. Your visit to Dan Fettrow's house was a day or two before that, was it not?

A. I can't remember it that way.

Cross-Q. 77. How do you remember it?

A. I remember of going there on Saturday and staying there Saturday night and Sunday forenoon, and going away on Sunday afternoon.

Cross-Q. 78. By "there," I suppose you mean Milltown, do you?

A. Yes, sir.

Cross-Q. 79. You spent Saturday night at Dan Drawbaugh's house, did you not?

A. Yes, sir.

Cross-Q. 80. Whom did you see at Milltown that Saturday and Sunday?

[*Objected to as immaterial, and as not relevant to the examination-in-chief.*]

A. I couldn't tell who all I seen.

Cross-Q. 81. Name those you remember.

[*Same objections.*]

A. I saw William Fettrow, the miller at the mill, and 'Squire Drawbaugh, Daniel Drawbaugh, George Drawbaugh, Daniel Fettrow, the blacksmith, and his son William, his son-in-law—I think his name is May—Wm. Fettrow, the store-keeper, C. S. Clendennin, and his son, and Daniel Drawbaugh's family—his wife and children.

Cross-Q. 82. Whom did Daniel Drawbaugh's family consist of?

A. I can remember of three girls and one boy; and his son-in-law William Sheeley.

Cross-Q. 83. Is Mrs. Sheeley Mr. Drawbaugh's daughter Laura?

A. I think it is Laura; she is the oldest girl.

Cross-Q. 84. Where did you spent the bulk of the day Sunday?

A. Down in Dan Drawbaugh's shop.

Cross-Q. 85. Who was there?

A. Daniel Drawbaugh, George Drawbaugh, William Fettrow, the blacksmith's son, Fettrow's son-in-law, my brother Abraham, and Mr. Heiges, who works in the shop.

Cross-Q. 86. Where did your brother Abraham spend Saturday night?

A. I think at George Drawbaugh's, in Milltown.

Cross-Q. 87. While you were there at that visit, Daniel Drawbaugh referred to your testimony, that you had spoken of his talking-machine to the Hardesty's when you went West in the spring of 1877, did he not?

A. I don't remember.

Cross-Q. 88. He asked you to go and see the Hardesty's, and find out what they remembered about it, didn't he?

A. Yes, sir; I think he did.

Cross-Q. 89. There was considerable talk during that visit, about this case and about Drawbaugh's talking-machine, was there not?

A. Yes, sir.

Cross-Q. 90. Dan Drawbaugh said that his side would surely win the case, and that he should remember his friends, did he not?

A. I don't remember that he said that his side would surely win the case, but he said that he would remember his friends.

Cross-Q. 91. Did your brother Abe go West when you did in January?

A. No, sir.

Cross-Q. 92. About how long afterward?

A. I don't remember; it was quite a while.

Re-direct by Mr. Hill:

Q. Q. 93. When Mr. Drawbaugh asked you to go and see the Hardestys and find out what they remembered, you had already had the conversation with your sister, Mary Evans, about your Philadelphia testimony, had you?

A. Yes, sir.

Q. Q. 94. And had you begun to have a suspicion that your Philadelphia testimony might be incorrect?

A. Yes, sir.

Q. Q. 95. Did you express that suspicion to Mr. Drawbaugh?

A. I can remember of telling him that I knowed that I had told Mrs. Hardesty about the talking-machine.

Q. Q. 96. I mean, did you intimate to Mr. Drawbaugh, at that time, that you had begun to have some doubts about the correctness of your testimony at Philadelphia?

[*Objected to as leading.*]

A. I don't remember.

Q. Q. 97. Was there any talk about your looking up the matter, and trying to get at the facts more accurately when you should get back to Indiana?

[*Objected to on the ground that it is leading, and upon the ground that it assumes that the witness' first deposition was not correct.*]

A. No, sir.

Q. Q. 98. Was there anything said about the possibility of your being recalled as a witness for the defendants at some future time?

A. I think Dan Drawbaugh said it was very likely he should call on us.

Q. Q. 99. Did he say what kind of evidence he wanted in the case—whether honest and truthful evidence, or otherwise?

A. Yes, sir; he told me that if I could reflect, and think of things, and do it honest, he would like if I would do it for him.

Q. Q. 100. Then he didn't tell you anything that he wanted you to testify to, but simply to reflect, and if you could testify to anything in his favor, and testify honestly in doing so, that was what he wanted; is that the fact?

[*Objected to as leading.*]

A. Yes, sir.

Q. Q. 101. Did he ever, at any time, or did anybody on his behalf, ever intimate to you that he or they wanted any evidence except an honest and truthful statement of facts?

A. No, sir; not that I know of.

Q. Q. 102. When Mr. Storrow and Mr. Comfort visited you, along about the beginning of June, 1882, and talked with you and your brother Abraham at your house in Indiana, you say that Mr. Comfort did not first mention the talking-machines. Will you tell us just how the talking machines were first mentioned in that conversation?

A. After Abraham and I had mentioned what we seen in the shop, Comfort says, "Is that all?" Says I, "No; there is something else. I have forgotten the name of it." So I looked around and asked my wife what that was that I told her what Dan Drawbaugh had. She says, "Telephone."

Q. Q. 103. Did the name of it then occur to you after your wife said "Telephone?" If so, what name occurred to you?

A. I knew the name all the time—"talking-machine," but I thought that wasn't the name. They called it telephone; I had forgotten the telephone.

Q. Q. 104. Where did you get the name "talking-machine," and how did you know that was the name?

A. That is what they called it here at Milltown.

Q. Q. 105. Then you had been familiar with that name before Mr. Storrow and Mr. Comfort came to see you, had you?

A. Yes, sir.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 21st day of December, 1883.

FRED. M. OTT,
Examiner.

JOSEPH DITLOW.

ANDREW EVANS, *being recalled, saith:*

Examined by Mr. Hill:

Q. 1. You stated to me a little while ago that you had come down from your home near Dillsburg to-day for the purpose of asking leave to make a correction in the 62d and 63d answers of your deposition in this case, taken October 23, 1883, and printed on pages 6 and 7 of defendants' sur-rebutting evidence, in which answers you positively

identified the machines "D," "E," "B," and "C," as machines which you saw at Drawbaugh's shop on that Sunday in the fall of 1875 when you, your sisters, and your brother Jacob and his wife, were there together. You are now at liberty to correct your answer.

A. I think I seen them, but I can't say positively that I seen them.

Q. 2. Do you mean that you can't say positively that you saw any talking-machines there that day, or that you can't say positively that you saw these particular machines there that day?

A. Yes, sir; I seen what Drawbaugh called talking-machines, only I can't say positively that these are the ones that I seen.

Q. 3. To the best of your knowledge and belief, are these the ones, or not?

[*Objected to as calling for opinion and not evidence.*]

A. Yes, sir.

Examination taken, reduced to writing, and by the witness subscribed to before me, this 21st day of December, 1883.

FRED. M. OTT,
Examiner.

ANDREW EVANS.

Adjourned until December 22, 1883, at 10, A. M.

December 22, 1883, 10.30, A. M.

Examination resumed.

Present, Mr. Howson for complainants, and Mr. Hill and Mr. Jacobs for respondents.

HENRY ANDERSON, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

My age is forty-nine; I reside in Fairview township, York county, Pennsylvania; I am a lime-burner now.

Q. 1. Where and in what kilns did you first do business as a lime-burner?

A. At John F. Hursh's; but I had been working out at the kilns there before.

Q. 2. When did you first work at John F. Hursh's kiln?

A. In 1871.

Q. 3. How long did you burn lime at John F. Hursh's kiln?

A. Six years.

Q. 4. Where is John F. Hursh's kiln?

A. On the Yellowbreeches creek about a mile from New Cumberland, on the York county side. It is Underwood's kiln now.

Q. 5. As you commenced there in 1871, and continued to work there six years, I suppose you worked there until 1877, did you?

A. Yes, sir.

Q. 6. In what year did the highest flood occur in the Yellowbreeches, that occurred during the summer season, at any time while you burned lime at Hursh's kiln?

[*Objected to as not rebuttal and immaterial.*]

A. In 1873, in August.

Q. 7. How do you fix the time as August, 1873?

A. The way I fix it—I was burning lime, you know, and had been keeping a book, and I go by that; and I go by what I heard other ones say then—that that was the year.

Q. 8. What does your book show that indicates to your mind the month in which the flood occurred?

A. That I sold no lime from the twelfth of August till the twentieth, to farmers. It sometimes happens that we do sell a little to neighbors; that didn't go on the book. I have here my book in which the original entries were made. They were copied from this book on to my other book. Some few of the entries were first made on a slate.

[*Witness produces the book, which shows various sales to different parties from the first of August up to the twelfth, and from the twentieth to the close of the month, but no sales between the twelfth and twentieth.*

The foregoing entry is made at request of respondents' counsel, and objected to by complainants' counsel as assertion and not evidence.

Respondents' counsel requests the examiner to look over the book and state the fact.

The examiner looks over the entire book, but can find no entries of sales of lime between the twelfth and twentieth of August, 1873.]

Q. 9. Do you remember anything about any person predicting that flood before it came? If so, tell us all about it.

A. Yes; John Hursh predicted that flood, in oats harvest, when we were cutting oats in the meadow. He claimed that we must hurry and get the oats out of there—that there would be a flood. I asked him why he predicted this; and he said that there were five moons in that

month, and we were going to have a flood; and the flood came, too, shortly after that. And Mr. Hursh claimed that the creek was the highest he ever saw it—so he told me—at that place.

Q. 10. By five "moons," do you mean five changes of the moon, such as new moon, first quarter, full moon, last quarter, and so forth?

A. Yes; five changes of the moon was what he meant.

Q. 11. Do you know anything about any foot-bridges having been damaged or injured by that flood?

[*Question objected to, so far as not expressly confined to personal knowledge.*]

A. Yes; there was a part of a foot-bridge came down the creek and landed on my bottom-land.

Q. 12. How large a piece was that that came down the creek?

A. It might have been thirty feet, as near as I can tell; it might have been longer, or shorter.

Q. 13. Was anything afterwards done or said about removing that piece of foot-bridge from your bottom-land?

A. Yes; Charles Sweeney, the supervisor, came to me, and told me that it was part of a foot-bridge that had been swept away up around Milltown, or in there somewhere, and he would like to take it away, or would have to take it away, to fix up the bridge with.

[*Answer objected to by Mr. Howson as hearsay.*]

Cross-examined, de bene esse, by Mr. Howson:

Cross-Q. 14. I understand that you were with Mr. John F. Hursh for six years, from 1871 to 1877; is that so?

A. Yes, sir.

Cross-Q. 15. Have you examined the book or books in your possession to ascertain whether there was any other period of time during those years, than these few days in August, 1873, during which you didn't sell any lime to farmers?

A. Oh, yes; there is different months. August is one of our greatest months for selling lime; that is the reason we are so careful of knowing that time.

Cross-Q. 16. My question was, whether you examined your books in order to find whether there were other months, in other years, during the lime-burning period, in which you didn't sell lime to farmers; or whether you confined your search to 1873, and to August of that year?

A. There are other months in the year—that is so—in which we

didn't sell lime—or much; but I didn't examine the books—or not lately—as I haven't got them.

Cross-Q. 17. Have you had any talk with any person or persons lately, or heard any other persons talking about this flood which you think happened in August, 1873?

A. Nothing more than I was talking to a man named George Spangler about it; and I was talking with a man named Witmer; and I think George Springer and I were talking something about it the other day, when we were fishing.

Cross-Q. 18. Who first, and within the last few weeks, asked you if you remembered anything about a flood which happened in the creek in August, 1873?

A. Michael Smyser.

Cross-Q. 19. Did Michael Smyser tell you what he wanted to know for?

A. Not till after he had asked me how long I had lived there; and then he asked me if I could mind something of the flood in 1873. I told him I could.

Cross-Q. 20. One Michael P. Smyser was examined as a witness on the part of the defendants in this case, [see pages 78 to 93, defendants' printed record,] and testified that he was at that time [April, 1881] fifty years of age; resided at Lisburn, Cumberland county; and was by occupation an auctioneer. Is that the Michael Smyser you have reference to?

A. Yes, sir.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 22d day of December, 1883.

FRED. M. OTT,
Examiner.

HENRY ANDERSON.

Recess until 2, P. M.

Mrs. KATE YOUNG, *being produced, sworn, and examined, saith:*

Examined by Mr. Jacobs:

I reside in Harrisburg, and am the wife of William Young.

Q. 1. Did you or not ever hear that Daniel Drawbaugh had a talking-machine at his shop at Eberly's Mills?

[*Objected to as not rebuttal, as leading, and as inquiring for hearsay.*]

A. Yes, sir; I did.

Q. 2. When did you first hear that, and who told you?

[*Same objection.*]

A. As near as I can tell, it must have been about thirteen or fourteen years ago. My father, Benjamin Kauffman, told me.

[*Answer objected to by Mr. Howson as not evidence.*]

Q. 3. A witness named Benjamin Kauffman testified on behalf of complainants in this case at Philadelphia December 28, 1882, and said among other things that his age was sixty-eight; occupation, farming; residence, McLean county, Illinois, where he had then resided nearly five years; that he went there in February, 1878, prior to which time he had resided for about twenty-five years near Eberly's Mills, Cumberland county, Pennsylvania. Is that Benjamin Kauffman your father?

A. Yes, sir.

Q. 4. Tell us, now, what he said to you about Drawbaugh's talking-machine at the time he first spoke to you about it.

[*Objected to as inquiring for hearsay, and also as assuming.*]

A. He said, "Drawbaugh's got a talking-machine now," or that he had a machine that he could talk through—something like that he was telling me about it.

Q. 5. Where did this conversation take place?

A. In the house, over at my father's, near Eberly's Mills.

Q. 6. Where were you living at the time?

A. I was living at Bridgeport, I think.

Q. 7. When were you married?

A. I was married in 1866.

Q. 8. Did this conversation take place after you were married; and if so, how long after?

[*Objected to in view of the testimony already given by the witness, and as inquiring for guess-work.*]

A. Yes, sir; about three or four years afterwards.

Q. 9. Did your father ever talk to you about any other inventions which Mr. Drawbaugh had at his shop?

A. Yes, sir; very often; and he often told me what an intelligent man he was. That I knew myself, because I was born and raised over there.

Q. 10. What other inventions do you remember his telling you of that Mr. Drawbaugh had at his shop?

A. He told me about his clock—that was some time afterwards, though—and several other things that I don't remember.

[*Entire deposition objected to as not competent; and cross-examination, de bene esse, by Mr. Howson.*]

Cross-Q. 11. In what business is your husband engaged?

A. He is watchman at the Cumberland Valley bridge.

Cross-Q. 12. At whose request did you attend here to-day to testify?

A. Mr. Shank's.

Cross-Q. 13. When, and by whom, were you first asked whether your father had ever said anything to you about Mr. Drawbaugh's having had a talking-machine?

A. Mr. Shank asked me last week.

Cross-Q. 14. Have you heard any talk at all, during the last two years, about the talking-machine, or about this suit?

A. Yes, sir.

Cross-Q. 15. Quite a good deal of talk, I suppose, from time to time, and from different persons; is that true?

A. Yes, sir.

Cross-Q. 16. When you came to live in Harrisburg, did you move here from Bridgeport?

A. Yes, sir.

Cross-Q. 17. I understand that you were born and raised in Cumberland county.

A. Yes, sir.

Cross-Q. 18. And you have, of course, quite a number of friends and acquaintances living there yet, in the neighborhood of Milltown or Eberly's Mills?

A. Yes, sir.

Cross-Q. 19. And you have heard a number of these friends and acquaintances speak about Mr. Drawbaugh and his talking-machine, and about this suit, quite a number of times, within the past few years?

A. Yes, sir.

Cross-Q. 20. Please give me the names of some of the persons living in and around Milltown, and with whom you are on intimate terms.

A. I don't know that I have spoken with any one living in the town, because I haven't been there lately; but I have visited the family of

Mr. John Free, at White Hill, quite a number of times, and they spoke of it.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 22d day of December, 1883.

FRED. M. OTT,
Examiner.

MRS. KATE YOUNG.

WILLIAM YOUNG, *being produced, sworn, and examined, saith:*

Examined by Mr. Jacobs:

My age is thirty-nine; residence, Harrisburg, Pennsylvania; occupation, bridge watchman for the Cumberland Valley Railroad Company; I am the husband of Mrs. Kate Young, who has just testified.

Q. 1. Did you or not ever hear that Daniel Drawbaugh had a talking-machine at his shop at Eberly's Mills?

[*Objected to as leading and inquiring for hearsay.*]

A. Yes, sir.

Q. 2. Can you name any particular person or persons who told you about it, or whom you heard speak of it?

A. Yes, sir; my father-in-law, Mr. Benjamin Kauffman; and I have heard Free's talk about it. It was general talk around about White Hill.

Q. 3. When did you hear Benjamin Kauffman speak of it, and where?

A. About 1871, or along there, at his home close by Gorgas' school-house, near Eberly's Mills.

Q. 4. Do you remember what he said about it?

A. He said that Mr. Drawbaugh had invented a talking-machine—a machine that you could talk in, or talk through.

Q. 5. Did you ever see Mr. Drawbaugh's talking-machine yourself, or go to see it?

A. I never saw his talking-machine. I went to his machine-shop once to see it, but there was nobody there.

Q. 6. Where were you living at that time?

A. I was living at Bridgeport.

Q. 7. When was it that you went to Drawbaugh's shop to see the talking-machine?

A. It was between 1871 and 1872 some time.

Q. 8. What time do you refer to when you say that Drawbaugh's talking-machine was general talk around about White Hill?

A. Along about 1871.

Q. 9. Where were you residing when you were married?

A. About half way between White Hill and Bridgeport.

Q. 10. Did you begin housekeeping there after you were married?

A. I commenced housekeeping at Wormleysburg.

Q. 11. Where did you go from there?

A. From there I went down to Bridgeport.

Q. 12. How long did you live there, and where did you move next?

A. I lived there half a year, and then moved up alongside of my father's, between Bridgeport and White Hill.

Q. 13. How long did you live there, and where did you move next?

A. I lived there about five months, and then went to White Hill. I lived there about a year, and then moved back to Bridgeport again.

Q. 14. How long did you live at Bridgeport the second time, and where did you go next?

A. Eight years; and then moved to Harrisburg.

Q. 15. How long have you been living in Harrisburg?

A. It will be six years next April.

Cross-examined by Mr. Howson:

Cross-Q. 16. Then, I understand from your testimony, that you were living in Bridgeport down to about April, 1878; is that correct?

A. Yes, sir.

Cross-Q. 17. Bridgeport is not more than two or three miles from Eberly's Mills, is it?

A. About two, or two and a half.

Cross-Q. 18. Are the Free's mentioned by you in answer to interrogatory two, the same Free's referred to by your wife in her deposition?

A. John and George Free I heard speaking about it.

Cross-Q. 19. You were present in the room here while your wife was giving her deposition, were you not?

A. Yes, sir.

Cross-Q. 20. The intimacy of you and your family with the Messrs. Free and their families continues down to the present time, doesn't it?

A. Yes, sir.

Cross-Q. 21. Since you have moved into Harrisburg, I suppose you

have came into social and business contact with your old friends from Cumberland county quite frequently; isn't that true?

A. Yes.

Cross-Q. 22. And during the two or three years that this suit has been going on, you have heard a good deal of talk about it, and about Drawbaugh's talking-machine, have you not?

A. I have heard a good deal about parties lawing—the Bell Company and the Drawbaugh Company.

Cross-Q. 23. You have had talks every now and then, have you not, with persons who gave you to understand that they knew something about L. . .s talking-machine?

A. I have talked some. I didn't get the particulars of it.

Cross-Q. 24. How long ago was it that you heard George Free talking about the talking-machine?

A. The time the talk was about it was along about 1871 and 1872—along about that time.

Cross-Q. 25. A Mr. George Free, who gives his residence as White Hill, Cumberland County, and his occupation as cattle dealer, has testified as a witness for defendants in this case. Is that the George Free you mean?

A. Yes, sir; that is the gentleman.

Cross-Q. 26. Did Mr. George Free ever tell you that he had been a witness in the case?

A. No, sir.

Cross-Q. 27. How long have you been watchman at the bridge, and what was your occupation before that?

A. I have been watchman at the bridge sixteen years. Before that I was working on the repairs for the railroad.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 22d day of December, 1883.

FRED. M. OTT,
Examiner.

WILLIAM YOUNG.

Adjourned until Thursday, December 27, 1883, at 2, P. M.

December 27, 1883, 2 P. M.

Examination postponed until December 28, at 10 A. M.

December 28, 1883, 10 A. M.

Further postponement until 3, P. M.

December 28, 1883, 3 P. M.

Examination resumed. Present, Mr. Storrow and Mr. Howson for complainants, and Mr. Hill and Mr. Jacobs for respondents.

Dr. ANDREW J. TRAVER, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:.

My age is nearly 58; residence, Marysville, Perry county, Pennsylvania; occupation, physician and surgeon.

Q. 1. Do you hold any official position in Perry county; if so, what?

A. I am coroner of the county at this time.

Q. 2. State whether or not you have held any other official position in Perry county, or in the borough in which you reside, during the last ten years; if so, what?

A. I have been assessor for three triennial terms, commencing in 1876,—reëlected in 1879 and 1882; I have also served in council in said borough; that is about all.

Q. 3. At what time in 1876 were you elected assessor?

A. I was elected in the spring at the regular spring election. It was in March or February—I am not certain which—of 1876. I most think it was in February.

Q. 4. Will you state when you took your oath of office for the first time as one of the triennial assessors?

A. The 13th day of November, 1876.

Q. 5. If you have here the original oath of office which you took and subscribed on the 13th day of November, 1876, will you please produce and exhibit it to the examiner, in order that he may copy it upon the record?

A. Yes, sir; I have it here; here it is.

"Perry county, *ss:*

"I, A. J. Traver, do affirm that I will support the Constitution of the United States and the Constitution of Pennsylvania, that I will, as assessor for Marysville borough use my utmost dilligence and ability to discover and ascertain all the property, real and personal, within my district, and all other objects subject to taxation by the laws of this Commonwealth, and take an accurate account of the same, and that I will justly and honestly, to the best of my judgment, assess and value

every separate lot, piece, or tract of land, with the improvements thereon, and all personal property made taxable by the laws of this Commonwealth within my district, at the rate or price which I shall, after due examination and consideration, believe the same would sell for, if sold singly and separately at a *bona fide* sale, after full public notice; and that I will rate all offices and posts of profit, trades and occupations, at what I shall believe to be the actual yearly income arising therefrom, and that I will perform my duty as assessor of said borough with honesty and fidelity, according to the laws of this Commonwealth, without fear, favor or affection, hatred, malice, or ill-will.

"A. J. TRAVER.

"Affirmed and subscribed before me, a Justice of the Peace, in and for the county of Perry, the 13th day of November, A. D. 1876.

"W. W. FARNSWORTH, *J. P.*"

Q. 6. This oath which you have produced purports to have been made before W. W. Farnsworth, justice of the peace; is Mr. Farnsworth living or dead?

A. Dead.

Q. 7. In whose possession has this paper—this oath or affirmation—been since the day you subscribed to it?

A. In my possession.

Q. 8. Is this the oath of office under which you acted during your first term as assessor?

A. Yes, sir.

Q. 9. I understand that, according to law in this State, the triennial assessments are made by three officials, the principal one of whom is designated as "assessor," and the other two as "assistant assessors;" were you, in 1876, elected assessor or only assistant assessor?

A. Assessor.

Q. 10. And were you reëlected to the same office in 1879 and 1882?

A. Yes, sir.

Q. 11. The election of assistant assessors, I suppose, occurred at the same time as the election of assessor, did it not?

A. Yes, sir.

Q. 12. When you were elected assessor, in 1876, who were at the same time elected your assistant assessors?

A. T. W. Morley and A. C. Dissinger.

Q. 13. If you have any paper with you issued from the commissioner's office of Perry county, Pa., in the nature of a commission or mandate to you, directing you to proceed to discharge the duty of assessor in making your first triennial assessments, will you please pro-

duce and exhibit it to the examiner, in order that he may copy it upon the record?

A. Yes, sir; here it is.

PERRY COUNTY, SS:
Seal of Commissioner's Office,
Perry county, Pa.

COMMISSIONER'S OFFICE,
BLOOMFIELD, PA., *October* 24, 1876.

To Dr. A. J. Traver, Assessor of Marysville Boro., Perry county:

GREETING: Pursuant to the several acts of Assembly, in such case made and provided, we, the Commissioners of the county of Perry, in the Commonwealth of Pennsylvania, hereby require and direct you to proceed forthwith to the place of abode of each and every taxable person residing within your borough, and with your utmost diligence and ability to discover, ascertain, make out, and return *a just and perfect list of the names of all taxable persons therein*, arranging them in alphabetical order as "owners of real property," "tenants," or "single," as the case may be, with a description of their property, real and personal, as also the several objects, &c., made taxable by the laws of this Commonwealth, together with a *just valuation thereof*, to be made in the manner hereinafter prescribed; the whole arranged under their appropriate heads in the tabular forms hereto appended.

1. Real estate, viz: All houses, lands, lots of ground, and ground rents, mills and manufactories of all descriptions, furnaces, forges, bloomeries, distilleries, sugar-houses, malt-houses, breweries, tan-yards, fisheries, and ferries, wharves and all other real estate not exempt by law from taxation.

2. The following personal estate, to wit: All horses, mares, geldings, mules, and neat cattle over the age of four years; also all mortgages, money owing by solvent debtors, whether by promissory note, penal or single bill, bond or judgment; also all articles of agreement and accounts bearing interest, owned or possessed by any person or persons whatsoever, except notes or bills for work and labor done, and bank notes.

All shares or stock in any bank, institution or company, incorporated by or in pursuance of any law of this Commonwealth, or of any other State or Government; and on all shares of stock or weekly deposits in any unincorporated saving fund institution, and all public loans or stocks whatsoever, except those issued by this Commonwealth.

All money loaned or invested or on interest in any other State.

All household furniture, including gold and silver plate, exceeding in value $300, owned by any person or persons, corporation or corporations.

All pleasure carriages, both of two and four wheels, and all stages, hacks, cabs, omnibuses and other vehicles, used for transporting passengers for hire.

All salaries and emoluments of office; all offices and posts of profit, professions, trades and occupations, except the occupation of farmers.

The afore-mentioned objects of taxation are taxable for county and State purposes—the following for State purposes alone, to wit:

All gold lever or other gold watches of equal value.

All other descriptions of gold watches and silver lever watches, or other silver watches, of like value.

Every other description of watches of the value of $20 or upwards.

All trades, occupations and professions (except the occupation of farmers,) over and above $200.

All salaries and emoluments of office created by or held under the Constitution or laws of this Commonwealth, or created by or held under any corporation, institution or company incorporated by this Commonwealth, where such salaries or emoluments exceed $200.

All annuities over $200, except those granted by this Commonwealth or by the United States, and upon all property, real or personal, (not taxed under existing laws,) held, owned, used, or invested by any person, company, or corporation, in trust, for the use, benefit, or advantage of any other person, company, or corporation, excepting always such property as shall be held in trust for religious purposes.

We especially enjoin it on you (as by *law* and *oath* you are bound) to assess and value every separate lot, piece or tract of land, with the improvements thereon, and all personal property, and other objects made taxable by the laws of this Commonwealth, within your said borough, whether for State, county, or other purposes, at the rate or price which you shall, after due examination and consideration, believe the same would sell for, if sold singly and separately at a *bona fide* sale, after full public notice; and that you rate all offices and posts of profit, professions, trades, and occupations, at what you shall believe to be the actual yearly income arising therefrom.

And if, in any case, (from the best information within your power, to be inquired for and obtained by you,) you should fail to obtain a correct or special description of aforesaid property, then you are to return the aggregate value thereof as nearly as you can ascertain the same; and in all cases of estimates made by you, where practicable, they shall be made as you would appraise the same in payment of a just debt due from a solvent debtor; and if any person whose personal property, trade, occupation, or profession, or office, taxable as aforesaid, shall before you have completed your assessment, make oath or affirmation that the value of their property, taxable as aforesaid, does not exceed a certain sum or sums, to be specified in said oath or affirmation, then you shall value such personal property, trade, occupation, profession, or office, at the sum or sums so specified and no more; and make return of this precept and your proceedings had thereon, to the County Commissioners at their office in Bloomfield, on Tuesday the 12th day of December, A. D. 1876.

Given under our hands, and the county seal, the day and year first above mentioned.

J. W. GANTT,
SOLOMON BOWER,
GEORGE CAMPBELL,
Commissioners.

Attest:
CALVIN NEILSON, *Clerk.*

Extract from the "Act to provide for the reduction of the public debt," approved April 22, 1846.

SECTION 3. It shall hereafter be the duty of each assessor within this Commonwealth, at the time of making the assessments in his ward, borough, or township, to require every person, every firm and partnership, and the president, secretary, cashier or treasurer of every company or corporate body, subject to taxation therein, to deliver him a statement in writing, or partly printed and partly written, showing the aggregate amount of money due and owing by solvent debtors to such person, partnership, firm, company, or corporate body, whether on mortgage, judgment, decree, bond, note, contract, agreement, accounts and settlements in the orphans' courts, and courts of common pleas, and other accounts, excepting executory contracts and agreements where possession has not been delivered to the vendee, under such written contracts or agreements, and excepting notes, contracts, or accounts for work or labor done, and bank notes, whether payable on demand or at any specified time, past, present, or future, or whether the time of payment be specified or not, and whether containing an agreement to pay interest or not, whether written or verbal; and also the amount of all shares or stock held or owned by such person, company, firm, or corporate body, in any bank, institution, or company, now or hereafter incorporated in pursuance of any law of any other State or Government, and all public loans or stocks whatever, except those issued by this Commonwealth, and all money loaned or invested on interest in any other State, and the several items aforesaid, composing such aggregate: *Provided*, That this section shall not be construed to require any statement of notes discounted or negotiated, or held by any banking institution.

SECTION 4. Each person, the president, secretary or treasurer of each company, and some member of each firm or partnership, from whom statements may be required under the preceding section, shall, within fifteen days after being so required by the assessors, respectively, make out and deliver to such assessor the statement or statements aforesaid; and the person making such statement or statements shall certify over his proper signature that the same is true and correct; and if any such person, member of a firm or partnership, or officer of such company or corporation, shall refuse or neglect to furnish such statement as is required by the provisions of this act, the assessor shall proceed to make out, from the best means he may be able to obtain, a statement or statements of money or stock specified in the preceding sections, owned by such persons, firm, partnership, company or corporation.

SECTION 5. In case any person, company, firm, or corporate body, shall not exhibit and set forth in any statement made in pursuance of this act, the full aggregate amount of his, her, their or its money and stock, as required by the preceding sections of this act, such person, company, firm or corporate body, shall forfeit and pay a sum of one hundred dollars, which shall be recoverable by any person suing for the same, in the name of the Commonwealth, as debts of like amount are by law recoverable; one half of which sum when so recovered, shall be paid to the proper county treasurer, for the use of the Common-

wealth, and the other half to the person at whose instance such suit shall or may be commenced and prosecuted to recovery; and nothing in this act shall be construed to require that any statement hereinbefore mentioned, shall exhibit more or other facts, than the whole or aggregate amount of the money or stock, specified in the said preceding section.

Q. 14. If you have any printed instructions in addition to those contained in the foregoing paper, and issued in 1876, directing you how to make your first triennial assessment, will you please produce and exhibit it to the examiner, in order that he may copy it upon the record?

A. Yes, sir; here it is.

[*Witness produces the following paper:*

COUNTY COMMISSIONERS' OFFICE,
BLOOMFIELD, PA., 24*th October*, 1876.

To the assessors of Perry county:

In making the triennial assessment this fall you will please observe the following regulations:

1. Prepare a blotter or book of foolscap paper, on which to take the assessments in the first place, and after you have the assessments completed, copy it in alphabetical order into the regular paper sent you, leaving at least one line between each individual assessment.

2. Value and assess all real estate at its *actual bona fide value, as your oath requires you to do*, as the Commissioners desire to get an equal valuation of real estate all over the county, and the only way this can be done is to have the assessment made as the law directs. If the assessors do not do this the Commissioners will *be compelled* to equalize the assessments by raising those that are below the full value.

3. Value horses in four grades—the highest to be about $80. Value neat cattle in two grades—good cattle to be valued at about $15.

4. In order to have occupations valued equally, the Commissioners have prepared the following schedule of occupation valuations and desire the assessors to be governed by it as near as possible:

Day laborers to be assessed at	$50
Boss mechanics to be assessed at	200
Ordinary mechanics to be assessed at	100
Merchants to be assessed at from	$125 to 150
Professional men to be assessed at from	150 to 400

The above schedule is prepared for the guidance of assessors, and is only general in its provisions. There are occupations that should be valued above this schedule, and some that should be below, (especially poor men who are old and unable to work, who should have only a nominal valuation.)

5. When you have completed the assessment, and copied it into the regular blanks, add the whole assessment or valuation of your district up, and place the same in the rear of your assessment list; also, place in the rear of your list the number of taxables in your district, and the number of deaf and dumb persons therein.

6. Complete your assessment and return it to the commissioners' office on or before Tuesday, the 12th day of December, A. D. 1876.

7. Make an effort to get upon your list all the money at interest, liable to taxation, in your district. Whenever you have reason to believe any person has money at interest, give him or her one of the blank money returns sent you, and require the person to make a certified return to you.

J. W. GANTT,
SOLOMON BOWER,
GEO. CAMPBELL,
Commissioners.

CALVIN NEILSON, *Clerk.*

Q. 15. I observe that these two last-mentioned papers, which I will call your commission and the other your printed instructions, both bear date the 24th day of October, 1876; will you state, as nearly as you can, about what time those two papers came into your hands from the county commissioners' office?

A. To the best of my recollection they came into my hands, by mail, within two or three days after they were issued.

Q. 16. I also observe that both of these papers directed you to complete your assessment and return it to the commissioners' office, on or before Tuesday the 12th day of December, 1876; was that direction complied with or not?

[*Objected to as not inquiring for the best evidence.*]

A. It was.

Q. 17. Then you made your assessment prior to the 12th day of December, 1876; and was it made after the date of your official oath of November 13th, 1876?

A. Yes, sir; it was made between those two periods.

Q. 18. Did your assistant assessors, Mr. Morley and Mr. Dissinger, assist you in making that first triennial assessment or not?

A. They did.

Q. 19. You state that your first triennial assessment was made between the 13th day of November and the 12th day of December, 1876; will you tell me in what year, and what time of year, your second triennial assessment was made?

A. It was made in 1879 about the same time of year that the first was made.

Q. 20. Who were your assistant assessors at the time your second triennial assessment was made?

A. T. W. Morley and A. C. Dissinger.

Q. 21. Will you state in what year, and at what time of year, your third and last triennial assessment was made?

A. In 1882, about the same time of year that the former ones were made.

Q. 22. And who were your assistant assessors at the time you made your third and last triennial assessment?

A. Chauncey S. Wise and William Baughman.

Q. 23. Will you please state whether or not you and your assistant assessors took any unusual care and pains in making your first triennial assessment; and, if yes, please embody in your answer a brief statement of the reasons that led you to do so?

[*Objected to as leading and incompetent.*]

A. We took particular pains in our first triennial assessment from the fact that the previous assessments had been very imperfectly made for several terms.

Q. 24. Had the previous assessments given rise to considerable complaint on the part of the people, or on the part of the county officials, or not?

[*Same objection.*]

A. The previous assessments had given rise to great complaint on the part of the property-holders of our borough.

Q. 25. You state that you took particular pains in your first triennial assessment; will you further state what pains or care you and your assistants took in examining and appraising property at the time of that first assessment?

A. To make an equal, just, and impartial valuation.

Q. 26. I mean what did you and your assistants personally do in order to make an equal, just, and impartial valuation?

A. We valued the property at what we believed it would bring at a *bona fide* cash sale.

Q. 27. How did you get at such valuation—by personal inspection, or how?

[*Objected to as leading.*]

A. By personal inspection and comparison of properties, taking for our basis what such property, or its like, was selling for.

Q. 28. Mr. Thomas Draper of Dover, Delaware, formerly owned and rented to George W. Kissinger a farm situated in the borough of Marys-

ville, Perry county; did that farm and the property thereon come into your first triennial assessment or not?

[*Objected to as not inqiring for the best evidence.*]

A. It did.

Q. 29. Who was living on the farm at that time?

A. George—I think his middle letter was W—Kissinger.

Q. 30. In assessing that farm and the property thereon in the fall of 1876 at your first triennial assessment, were said farm and the property thereon personally visited and inspected by the assessors or not?

A. It was.

Q. 31. Who of the assessors made that visit and inspection in the fall of 1876 at your first triennial assessment?

A. Myself, T. W. Morley, and A. C. Dissinger.

Q. 32. Did you three gentlemen, at the time of making your first triennial assessment, visit Mr. Draper's farm together or separately?

A. Together.

Q. 33. Did you go together to the farm-house occupied then by Mr. George W. Kissinger?

A. Yes, sir.

Q. 34. At the time of that official visit to the Draper farm in the fall of 1876, did you see Mr. George W. Kissinger there at the farm or not?

A. We saw him.

Q. 35. Where did you find him when you visited the farm at that time?

A. In the barn-yard.

Q. 36. Did you first go the house and then to the barn to find him?

A. Yes, sir; we went to the house and inquired for the gentleman, and were informed by his family that he was about the barn.

Q. 37. And did you and Mr. Morley and Mr. Dissinger, all three, go down to the barn to see him?

A. Yes, sir.

Q. 38. While you were down there at the barn, did you see or go to the spring which is situated in the valley not far from the end of the barn?

[*Objected to as leading.*]

A. Yes, sir.

Q. 39. Who went to the spring?

A. I went to the spring to get a drink.

Q. 40. Where were the assistant assessors while you were getting a drink at the spring?

A. To the best of my recollection, they remained with Mr. Kissinger.

Q. 41. At or near the barn?

[*Objected to as leading.*]

A. Yes, sir.

Q. 42. After you got your drink at the spring, did you return to them or not?

[*Same objection.*]

A. I returned to them.

Q. 43. Where were they when you joined them on your return from the spring?

A. They were in the barn-yard, and to the best of my recollection, standing by the barn-yard fence where I left them.

A. Yes, sir.

[*Deposition suspended at this point by reason of the fact that Dr. Traver was obliged to be absent in order to attend to professional duties; and the deposition of Abraham C. Dissinger, hereafter printed, was taken.*]

December 29, 1883, *resumed.*

Q. 45. Do you remember any conversation that ensued between Mr. Kissinger, your associates, and yourself, upon your return to them from the spring after getting your drink that day?

A. I remember some conversation.

Q. 46. Please state what that conversation was.

A. I will give, to the best of my knowledge, the sum and substance of the conversation; not promising, however, to repeat the exact words or language. While at the spring getting a drink, the idea came into my mind that the water from the spring could be conveyed to the house by the use of a hydraulic ram; and when I returned to the parties, I made the remark that if I owned that property I would have a hydraulic ram, or that there should be one put in. Mr. Kissinger said they had one in. After saying they had one in, one of the party of us—being Mr. Dissinger, to the best of my recollection—said he would like to see it work. I asked Mr. Kissinger where it was located or planted. He pointed down the ravine and said, "Down there," pointing towards the place. He said, however, that it did not or would not work. Mr. Dissinger then said that he did not care about seeing it. That ended the conversation. We then started back towards the house.

Q. 47. As you went back towards the house, did you go anywhere near the spot to which Mr. Kissinger had pointed as the site of the ram?

A. In going across the ravine towards the house, I have a faint recollection of hearing Mr. Kissinger say and point to the place where it was.

Q. 48. How near were you to it then?

[*Objected to as assuming.*]

A. It may have been a couple of rods. I can't say positively, as I paid very little attention to it.

Q. 49. Have you any recollection of the appearance of the spot which Mr. Kissinger pointed to as the spot where the ram was situated?

[*Objected to as assuming, and as incompetent in view of the witness' previous statement, that in answer* 47 *is given only as a matter of faint recollection.*

Respondents' counsel replies that Mr. Kissinger pointed to the spot twice —once while they were at the barn, and once as they were passing towards the house, as already appears from the witness' testimony.

Reply objected to by Mr. Howson as leading the witness, and as not in accordance with the testimony.]

A. I saw a place covered over with some rubbish—at least apparently so, in my mind now. The recollection is so faint that I can't say anything positively with regard to that matter. It might have been boards, or corn-fodder, or other material. I might add here, that after leaving the barn-yard I paid no further attention to the matter.

Q. 50. How positive is your recollection that Mr. Kissinger stated to you and your associates, while you were there that day, that he had a ram in there?

A. I am very positive that he made the statement.

Q. 51. Will you tell us when was the last time that you were ever at that barn, or down in that ravine which Mr. Kissinger pointed out as the site of the ram?

[*Objected to as assuming.*]

A. I have never been there since that day; I have been at the farm-house on professional business, but never beyond it in the direction of the spring.

Q. 52. How many times were you ever on that farm in company with Mr. T. W. Morley and Mr. A. C. Dissinger?

A. Only that one time, that I recollect of.

Q. 53. When you made the triennial assessment in the year 1879, who made the valuation of the property on that farm?

A. The same board served again in 1879.

Q. 54. Did the board go out to the farm in 1879 to make the assessment?

A. No, sir.

Q. 55. How was it made?

A. We met Mr. Kissinger on the public highway and got his statement.

Q. 56. Who met him and got his statement?

A. Mr. Dissinger and myself.

Q. 57. Why was not Mr. Morley with you at that time?

A. Mr. Morley complained of being unable to go for some cause that I cannot name.

Cross-examined by Mr. Howson:

Cross-Q. 58. How far is your residence from the Draper farm?

A. It is probably from a half to three quarters of a mile, by way of the streets and public road.

Cross-Q. 59. Have you lived ever since 1876 where you lived in that year?

A. Yes, sir.

Cross-Q. 60. How long have you personally known the Mr. Kissinger referred to in your testimony?

A. It may, perhaps, be ten years. I have known since the time he kept store in the house now occupied by E. W. Wise, merchant, in Marysville.

Cross-Q. 61. Was that before or after he occupied the Draper farm?

A. Before.

Cross-Q. 62. While he was occupying the Draper farm, did you visit him and his family professionally?

A. Yes, sir.

Cross-Q. 63. And did you continue to do so from time to time until he left there?

A. Yes, sir.

Cross-Q. 64. When was it, according to your recollection, that he left that farm?

[*Objected to as immaterial and irrelevant to anything brought out on the direct examination.*]

A. I cannot say positively without reference to my books. It might have been in the spring of 1880 or 1881.

Cross-Q. 65. Do you recollect what time of day it was that you and your associates visited the farm for the purposes of the assessment in 1876?

A. It was during the middle portion of the day.

Cross-Q. 66. What properties had you visited upon the same business previously that same day?

A. We visited all the properties on the valley road either on our going out or returning to the borough limit.

Cross-Q. 67. What particular circumstances connected with any other visit made that day do you now especially recall?

A. Upon our returning we stopped with Mr. Morley, reported our work for his inspection, and then proceeded to assess some other properties in the borough.

Cross-Q. 68. If I understand your testimony aright, you went that day first to Mr. Kissinger's house, then from the house to the barn, where you found and talked to Mr. Kissinger, and then you, and he with you, returned from the barn to the house; is that your recollection?

A. Yes, sir; by way of the house we returned.

Cross-Q. 69. Whom, if you recollect, did you see at the house when you first called there, and whom did you see at the house on your return there?

[*Objected to as assuming.*]

A. When we went to the house we made inquiry of some of the occupants of the house—I think the mother and probably a daughter or two—at the basement door. We inquired for Mr. Kissinger. On our return I do not recollect of seeing any one.

Cross-Q. 70. While you were at the house, and Mr. Kissinger with you, did you continue to make any inquiries there as to items of personal property, and so forth?

[*Objected to as assuming.*]

A. Not to my recollection.

Cross-Q. 71. What place did you visit next after visiting Mr. Kissinger's that day?

A. We either visited the Swartz farm directly previously or directly afterwards; I can't say which.

Cross-Q. 72. Assuming that you visited the Swartz farm previously, what property did you visit next after the Draper farm?

A. As previously stated, we visited all the properties on the valley road, either going out or coming in.

Cross-Q. 73. Please name all the particular property-owners and property-holders whom you particularly recollect seeing and conversing with on the same day that you visited Mr. Kissinger, and either before or afterwards.

A. The properties that we visited partly belonged to Mr. Draper and a Mr. Miller—I can't name his first name—property of Jacob Keinert and of a man by the name of Robinson, and Stephen H. Morley; there was a number of others that were occupied by tenants who have moved away, and I can't recall their names. There were not very many families living along that road within the borough limits, outside of the village proper.

Cross-Q. 74. Do you recollect whether, when you saw Mr. Kissinger at the barn, there was anybody with him or not?

A. Not to my recollection.

Cross-Q. 75. On which side of the barn were you and Mr. Kissinger and you associates standing—that is to say, on which side of the barn with reference to the house?

A. On the side towards the house.

Cross-Q. 76. Did you go from the house towards the barn by a direct path?

A. I don't think we paid much attention to a path; there was a road leading down the hill; we may have followed that road part way; our object was to go directly from the house to the barn, and didn't pay much attention to the path.

Adjourned until Monday, December 31, 1883, at 10, A. M.

[*The deposition of O. H. Miller, taken at this point, is, for convenience, hereinafter printed.*]

December 31, 1883, 2:30, P. M.

Examination resumed.

Present, Mr. Storrow and Mr. Howson for complainants and Mr. Hill and Mr. Jacob for respondents.

Cross-Q. 77. In your answer to cross-interrogatory 75, you state that in going from Mr. Kissinger's house to his barn your object was to go

directly from the house to the barn; and that you didn't pay much attention to the path; are we to understand from that that, according to your recollection, you and your associates went in as nearly a straight line from the house to the barn as circumstances would permit?

A. We may not have went as direct as circumstances would permit; I do not think that we paid much attention to the road. The road, I think, was a very obscure one to the best of my recollection.

Cross-Q. 78. And I understand that after your conversation with Mr. Kissinger at the barn, you and your associates, and Mr. Kissinger with you, went straight back to the house; is that correct?

[*Objected to as an assumption without any foundation in the previous testimony, and as already substantially answered in answer to cross-question* 68.]

A. I won't say that we went straight back; we may have deviated from a straight line on account of the hill.

Redirect by Mr. Hill:

Q. Q. 79. At the visit in the fall of 1876 to Kissinger's place to make your first triennial assessments of the property there, will you state again who of your assistants were there with you at that time?

A. Mr. Morley and Mr. Dissinger.

Q. Q. 80. Will you state again in what year it was that you and Mr. Dissinger went to make the valuation without Mr. Morley and met Mr. Kissinger on the public highway, and asked him about the property, and upon your return to the village reported to Mr. Morley about it?

[*Objected to as leading.*]

A. In 1879.

Q. Q. 81. Then when you answered cross-question 67, what year and what assessment did you have in mind?

[*Same objection, and also as incompetent.*]

A. 1879.

Q. Q. 82. The cross-question 67, however, did not refer to the assessment of 1879, but it referred back to cross-question 65, in which the visit to the farm for the purposes of the assessment of 1876 was mentioned. Cross-question 65 inquired, in substance, what time of day it was that you and your associates visited that farm for the purposes of the assessment of 1876; to which you replied that it was during the middle portion of the day. The next question, No. 66, inquired what

properties you had visited previously upon the same business *that same day*; to which you replied that you visited all the properties on the valley road either in going out or returning to the borough limit. Then followed cross-question 67, which inquired what particular circumstances connected with any other visit *made that day* you now specially recall; to which you replied that upon your return you stopped to see Mr. Morley, reported your work for his inspection, and then proceeded to assess some other properties in the borough. You now state that when you made that last-mentioned answer, you had in mind the assessment of 1879. I will, therefore, now repeat cross-question 67, explaining to you that it refers to the day when you, Mr. Dissinger, and Mr. Morley visited the Draper or Kissinger farm together in the fall of 1876, in making your first triennial assessment. With that explanation, I now ask you what particular circumstances connected with any other visit (meaning any other visit to any other property) made that day, do you now especially recall?

[*Same objections.*]

A. On my cross-examination on Saturday, I named the property-holders on the valley road outside of the village proper; in the village proper, I did not name any. I will now name parties in the village proper that were assessed at that same time. I will state, before naming them, that nearly all the parties then living or owning property on the valley road have either moved away, sold out, or died. Therefore, I may not be able to recall all their first names.

We visited the Souders property—he has been dead a number of years—John Longsdorff's property—he has left the country for a number of years—George Kocher's property—Mr. Hill's property; James A. Nesbitt's property, Mr. Strine's property; that constitutes the principal part of the properties on that road. We then adjourned and went to dinner.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 31st day of December, 1883.

FRED. M. OTT,
Examiner.

A. J. TRAVER.

ABRAHAM C. DISSINGER, *being produced, affirmed, and examined, saith:*

Examined by Mr. Hill:

My age is forty-two; residence, Marysville, Perry county, Penna.; occupation, railroader.

Q. 1. How long have you been living at Marysville?

A. Since 1861; there was nineteen months during the Rebellion that I was in the army; I enlisted in 1864.

Q. 2. Did you ever hold the office of assistant assessor for the borough of Marysville?

A. Yes, sir.

Q. 3. How many terms did you hold that office, and when were you first elected to it?

A. Two terms; I was elected in 1876 and 1879.

Q. 4. Who was the assessor during your two terms?

A. Dr. A. J. Traver.

Q. 5. When did he first become assessor in that borough?

A. In the spring of 1876.

Q. 6. Who was the other assistant assessor during your two terms?

A. T. W. Morley.

Q. 7. What assessments are the assistant assessors required to take part in making?

A. In real estate, cattle, watches, carriages, and such like, I believe. That is as near as I can recollect—money at interest, too.

Q. 8. I didn't refer to the kind of property they are required to assist in assessing, but meant to ask what assessments they take part in; whether all assessments or any certain assessments; or, in other words, how often are they required to take part in making assessments?

A. Once in three years, or what is called the triennial assessment.

Q. 9. Then, if I understand you, the assistant assessors do not assist in making any assessment except the triennial assessment; am I correct?

A. Yes, sir; you are correct; that is all.

Q. 10. How many assessments did you assist in making during your two terms?

A. Two.

Q. 11. In what years did you assist in making those two assessments?

A. In 1876 and 1879.

Q. 12. At what time of the year were those two assessments made?

A. The one in 1876 was made in the fall of the year. The other I am not so positive about, but think it was also made in the fall of the year.

Q. 13. Do you remember whether or not, at the time of making your first triennial assessment, it was made and returned within the time required by the county commissioners?

[*Objected to as incompetent.*]

A. Yes, sir; I remember of the Doctor saying that we must hurry up and make the assessment between the 13th of November and a date in December which I don't recollect. I suppose he did so. He had the returns to make. The assistant assessors have nothing to do with making the returns, but only with making the assessment or valuation.

Q. 14. Will you tell us whether the triennial assessment, which was made in the fall of 1876, was made with great care or not?

[*Objected to as incompetent.*]

A. Yes, sir; it was; we took particular interest in it.

Q. 15. State briefly the reason why any extraordinary care was taken in making that first triennial assessment of yours.

A. For the reason that the previous assessment by Mr. Schreiner and his assistants was entirely too high, and so considered by the people.

Q. 16. What course did your board of assessors adopt in order to get at a correct valuation of the property in the assessment of 1876?

A. We valued property at what we thought it would bring at a quick or forced sale; and each man would carry a slip of paper and mark down what he thought each property was worth; and if we differed, we would add them up and divide by three and average it in that way.

Q. 17. When making your assessment in the fall of 1876, did you visit the farm of Mr. Thomas Draper then occupied by his tenant, George W. Kissinger, or not?

A. We did; we visited the farm.

Q. 18. Who visited the farm to make that assessment in the fall of 1876?

A. Dr. A. J. Traver, myself, and T. W. Morley.

Q. 19. Together or separately?

A. Together.

Q. 20. At that visit did you go to Mr. Kissinger's house on said farm?

A. We did; we went to the house.

Q. 21. Did you find Mr. Kissinger there at the house?

A. No, sir.

Q. 22. When you failed to find him at the house, what did you do?

A. We inquired of the old lady—that is, Mrs. Kissinger—and she said he was at the barn, she thought.

Q. 23. When you were informed that he was probably at the barn, what did you do?

A. We all went down there.

Q. 24. Did you find Mr. Kissinger there or not?

A. Yes, sir; we found him there.

Q. 25. What, if any, property did you examine and appraise at the barn?

[*Objected to as not seeking the best evidence.*]

A. We looked at the cattle and took an account of them and asked him some questions regarding the cattle.

Q. 26. While you were there at the barn did any one of your party go to the spring or not?

A. I think that Dr. Traver said he was dry and asked Mr. Kissinger where he could get a drink; and I think he went to the spring; I would not be positive about that, though.

[*Answer objected to by Mr. Howson as not evidence.*]

Q. 27. While you were there at the barn do you remember whether or not Dr. Traver made any remark about the quality of the drinking-water there?

[*Objected to as leading and as incompetent in view of the last answer.*]

A. I can't just exactly say. It seems to me he did make some remark. But this he said. He got to talking about the water and that they ought to get a ram to force the water up to the house; and Mr. Kissinger spoke up and said that they did have one.

[*Answer objected to by Mr. Howson as not evidence.*]

Q. 28. Did Mr. Kissinger say at that time how long they had had the ram to force the water up to the house?

[*Objected to as incompetent.*]

A. No, sir; he didn't.

Q. 29. Did he say whether the ram had been working or not?

[*Objected to as leading and incompetent.*]

A. Yes, sir; he said it had been working.

Q. 30. Did he say whether it had been working well or not?

[*Same objection.*]

A. Yes, sir; he said it done first-rate, or something to that amount. I got inquisitive then; it was a peculiarity to me at that time; it was quite a distance.

Q. 31. What was quite a distance?

A. The spring from the house.

Q. 32. You say you got inquisitive about it when Mr. Kissinger said that it "done first-rate;" did your inquisitiveness lead you to ask some questions about it; if so, what?

A. Yes, sir; I said that I would like to see it; then he says: "It isn't in working order now."

Q. 33. What else was said about it?

A. After he told me it wasn't in working order I got disinterested. I thought it wasn't worth while to go to see it. There wasn't but very little said after that, when he told me it wasn't in working order; I think the subject was dropped then, or very little was said about it.

Q. 34. I understand from your 30th answer that at that time a hydraulic ram was something of a novelty to you.

A. Yes, sir; I thought it strange that it would force the water up so high; I asked the Doctor about it, and he explained the science of it, and it seems to me Mr. Morley talked some little about it; but after I was told that it wasn't in working order I lost my inquisitiveness; I would have liked to have seen it work.

Recess until 7.30, P. M.

Q. 35. When the triennial assessment was made in the fall of 1879, did you or did you not go on to the Draper or Kissinger farm to make a valuation of the property there?

A. No, sir; we did not. We met Mr. Kissinger somewhere—I think it was on the public road—I am not positive about that, though. The truth is we did not make as close an assessment as we did in 1876; we just looked into the matter of improvements on the property that we had assessed in 1876.

Q. 36. Then, were you or were you not on that farm to make an assessment since 1876?

A. I am confident that I haven't been on the farm since 1876, for

any purpose, except that I was up in the hollow at the lower end of the farm one Sunday; but I have not been near the house or barn since the time we made the assess ment in the fall of 1876. The farm runs down towards the village, and I was just about fifty yards over the line, but not within sight of the house or barn, on the Sunday I spoke of. I may have been down there on the lower end of the farm more than once, but I only rememember that one Sunday; I just strolled out there for a little walk.

Q. 37. I wish to know whether you, and Dr. Traver, and Mr. Morley were ever on that farm together at any other time than the occasion when you made the assessmeet, in the fall of 1876, or not?

A. We were not.

Q. 38. In your answer 35, you state that when you made the assessment in the fall of 1879, you did not go on to the Draper or Kissinger farm, but think you met Mr. Kissinger somewhere; who of the assessors met Mr. Kissinger at that time?

A. Dr. Traver and I; Morley was not along. To the best of my recollection he was not well; he was complaining of rheumatism, or something of that kind. Dr. Traver and I went up the valley that day and reported to Morley, after we got back to the village, as to the work we had done.

Cross-examined by Mr. Howson:

Cross-Q. 39. You say you are a railroader. What is your occupation on the railroad, and on what railroad, and how long have you been following your present occupation?

A. I run a mixed train; or rather I work in the yard and run what is called the Dauphin accommodation train on the Northern Central Railway; I have worked on the railroad ever since I first came to Marysville. When I first came to Marysville I worked on the track; then I worked myself up and became a conductor on the Susquehanna division of the Northern Central road; then I was a dispatcher for a while; and then I became conductor of this mixed train that I am on now. As I have stated, I was in the army nineteen months of this time.

Cross-Q. 40. You have referred, in answer to interrogatory 36, to an occasion on a Sunday when you were at the Draper farm; when was that?

A. Oh, I couldn't exactly tell; it was on Sunday. I may have been up there other Sundays—strolled up there—but I couldn't exactly tell.

I wasn't over fifty yards from the line; there is a grove there, and I walked up there from my place in the summer; it is a cool place.

Cross-Q. 41. How far is your house in Marysville from the Draper farm?

A. I judge it to be about five hundred yards.

Cross-Q. 42. How long have you lived where you are now living?

A. About four years, as near as I can recollect.

Cross-Q. 43. How far from your present residence were you living in 1876?

A. A distance, I suppose, of three or four hundred yards, as near as I can tell, further away from the Draper farm to the east.

Cross-Q. 44. You moved from there to your present residence?

A. No, sir.

Cross-Q. 45. In what other house or houses, then, did you live between times?

[*Objected to as immaterial, and as irrelevant to the examination-in-chief.*]

A. I lived in Mr. Jobson's house, just about a hundred yards north of my house in which I live now; I lived there about five months while my house was building.

Cross-Q. 46. How long before 1876 were you living in the house which you have described as being some three or four hundred yards further away from the Draper farm than that which you now occupy?

A. I moved into that house in 1862, I think. I built it in the fall of 1861. I think I moved into it in the month of January or February, 1862; I remember that it was winter because the plastering froze.

Cross-Q. 47. What is your recollection, if you have any, as to the time at which Mr. Kissinger became the occupant of the Draper farm?

[*Objected to as immaterial and as irrelevant to the examination-in-chief, and because it does not appear that the witness has any knowledge of the matter inquired of.*]

A. I couldn't possibly tell how long previous to 1876 exactly—some time previous, but I couldn't tell the time or fix it in my mind at all.

Cross-Q. 48. If I rightly understand your testimony, you think that in the fall of 1879 you and Dr. Travers performed your duties as assessors, so far as the Draper farm was concerned, by interviewing Mr. Kissinger on the public road; whereabouts on the public road was

this, and where had you and Dr. Traver been, or where were you going to?

A. To the best of my recollection, it was on the public highway, right opposite his residence, and I think we were going up to the next farm—which is the last farm in the borough—to interview that man. I am not positive as to the place where we met him, but I think that it was on the public road; it was not at his residence, anyhow.

Cross-Q. 49. Did you go to the farm beyond that day? and if so, state whose farm it was at that time and whom you saw there.

A. I ain't so sure whether the man who lives there now owned it—Mr. Swartz owned it in 1876—I think the man who owns it now owned it in 1879—Mr. Beam; I am not so positive about that; that is to the best of my recollection.

Cross-Q. 50. How many days did you and your associates devote to your assessment work in 1876?

A. I can't exactly tell; I think we were at it about six days. We were at it a longer time than we were in 1879. We made a more careful assessment in 1876.

Cross-Q. 51. Was the Draper farm one of the first or one of the last properties that you assessed in 1876?

A. It wasn't the first; but it seems to me, to the best of my recollection, that it was pretty near to the last; but I think it wasn't altogether the last.

Cross-Q. 52. What time of day was it that you and your associates visited the Draper farm?

A. Indeed, I couldn't tell that—whether it was forenoon or afternoon.

Cross-Q. 53. What other property-owners do you remember visiting on that same day?

A. As near as I can recollect, we were assessing on that public highway that runs up; a part of the town is built on that road. As near as I can recollect we were assessing on that road—in 1876.

Cross-Q. 54. What I wish to know is, what other property-holders besides Mr. Kissinger you are able to say that you distinctly remember visiting on the same day on which you visited Mr. Kissinger?

A. A man by the name Kocher lives on that street and a man by the name of Charles Miller—or Charles Miller's property. I think he was dead then. It joins the Draper farm on the east; it is a house and lot. I couldn't enumerate all the names hardly.

Cross-Q. 55. You have stated that on your visit to the Draper farm,

you found Mrs. Kissinger at the house; was that your first acquaintance with the lady?

A. That is the first time, I believe, that I ever spoke to the lady. At one time they lived a few doors from us, but I never spoke to her. And it was the last time. I never spoke to her since.

Cross-Q. 56. Do you remember meeting anybody else on that day on the farm besides Mr. and Mrs. Kissinger?

A. I think that I saw one of the girls in the house when I went in to interrogate Mrs. Kissinger as to where Mr. Kissinger was; I wouldn't be positive, though.

Cross-Q. 57. When you went from the house to the barn, did you take the nearest road there?

A. I ain't positive, but I think I would; it seems to me there was a path ran down there; I am pretty confident of that.

Cross-Q. 58. After your interview with Mr. Kissinger, did you return from the barn to the house by the same path?

A. I think we went across to Mr. Swartz's farm. I am not certain, but I know we didn't go by the house.

Cross-Q. 59. When you found Mr. Kissinger at the barn that day, what work did he seem to be engaged upon?

A. I think he was walking out from the barn to a little inclosure with a fence around; and we were standing there looking at the cattle. I think he was throwing down the fence or a couple of rails when I first seen him.

Cross-Q. 60. Was anybody with him when you first saw him there?

A. No, sir.

Cross-Q. 61. When, in 1879, you and the Doctor met Mr. Kissinger on the public road, how long did you three talk together?

A. To the best of my recollection, not very long.

Cross-Q. 62. How much of the talk then do you recollect now?

A. We interrogated him about his cattle, and that was about all. We had nothing to do so far as the farm was concerned. Mr. Kissinger didn't own the farm, although he was farming it at that time. It wasn't necessary to ask him the value of the farm—improvements we knew there was none.

Cross-Q. 63. Mr. Kissinger didn't own the farm in 1876, did he?

A. No, sir.

Cross-Q. 64. How many other properties do you remember assessing in 1879, by talking with their owners or occupiers on the public road?

[*Objected to as immaterial and irrelevent.*]

A. I can't recollect of any.

Cross-Q. 65. Was the house on the Draper farm in 1876, a wooden or a stone house?

A. Stone.

Cross-Q. 66. Do you remember noticing any porticos or porches or woodwork of that kind about the house at that time?

A. I cannot remember; I remember of a wooden observatory on top of the house. I recollect of that.

Cross-Q. 67. Name all the persons with whom you have recently had any conversation about the visit to the Draper farm in 1876.

A. I recollect of none except the Judge there and another gentlemen—I don't know whether it was Mr. Jacobs or not—and Squire Fenn. They were at my house, and that was the only time I can mind that I talked of it.

Cross-Q. 68. Do you mean that all three were at your house; and if so, when was it?

A. Yes; I couldn't tell the time. It might have been seven or eight months ago, and probably not so long, that they were there.

Cross-Q. 69. Who is the Squire Fenn you name, and where does he live?

A. He lives at Marysville; he is a justice of the peace.

Re-direct by Mr. Hill:

Q. Q. 70. The Jobson house, which you lived in five months at one time, was situated north of the house where you now live, was it?

A. Yes, sir; just across the street.

Q. Q. 71. The Draper farm lies in a southerly direction from your farm, does it?

A. No, sir; it is west.

Q. Q. 72. The grove that you spoke of as a cool place in summer is at the easterly edge of the Draper farm, is it?

A. Yes, sir; it belongs to a Mr. Riffe, of Philadelphia.

Q. Q. 73. That grove extends from the easterly end of the Draper farm towards your house, does it?

A. Yes, sir; to within a couple of hundred yards of it.

Q. Q. 74. Where were you living at the time when you used to go into that grove to cool off in the summer?

A. I was living in my new house then—the one in which I now live.

Q. Q. 75. Is that grove in a hollow?

A. Yes, sir; it is in a ravine through which the stream from that spring on the Draper property runs.

Q. Q. 76. The stream from the spring runs easterly and empties into the Susquehanna, does it?

A. Yes, sir.

Q. Q. 77. There is a cemetery at the western edge of the village on that stream, is there not?

[*Objected to as not reëxamination.*]

A. Yes, sir.

Q. Q. 78. How far does the borough of Marysville extend to the west of the Draper farm?

[*Same objection.*]

A. I would suppose about three or four hundred yards. I think there is a field between them, but I ain't so positive about that.

Q. Q. 79. The Swartz or Beam farm: is that the only farm between Draper's farm and the west line of the borough?

A. Yes, sir; the next farm is Mr. Cowan's farm, in Rye township.

Examination taken, reduced to writing, and by the witness affirmed and subscribed to before me, this 28th day of December, 1883.

FRED. M. OTT,
Examiner.

A. C. DISSINGER.

Adjourned until December 29, at 10, A. M.

December 29, 1883, 10.45, A. M.

Examination resumed.

Present, same counsel.

THOMAS W. MORLEY, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

My age is fifty-two; residence, Marysville, Perry county, Pa.; occupation, merchant.

Q. 1. How long have you resided at Marysville?

A. I first came to that section of country in 1854, long before there was a town.

Q. 2. Did you ever hold the office of assistant assessor for the borough of Marysville; if so, how many terms did you hold such office, and when were you elected to those terms?

A. I have held the office of assistant assessor in making the triennial assessment, two terms; I was elected first in 1876; second, three years later, which would be in 1879.

Q. 3. If you have your oath of office here with you which you took and subscribed to at the time when you entered upon your duties at your first term as assistant assessor, will you please produce and exhibit it to the examiner, in order that he may certify upon the record the date of that official oath?

A. This is the oath that I made at that time.

[Witness produces paper.

The examiner certifies that the oath is as follows:

Perry County, ss:

I, T. W. Morley, do swear that I will support the Constitution of the United States, and the Constitution of Pennsylvania; that I will, as assistant assessor for Marysville borough, use my utmost diligence and ability to discover and ascertain all the property, real and personal, within my district, and all other objects subject to taxation by the laws of this Commonwealth, and take an accurate account of the same; and that I will justly and honestly, to the best of my judgment, assess and value every separate lot, piece, or tract of land, with the improvements thereon, and all personal property made taxable by the laws of this Commonwealth within my district, at the rate or price which I shall, after due examination and consideration, believe the same would sell for, if sold singly and separately, at a *bona fide* sale, after full public notice, and that I will rate all offices and posts of profit, trades, and occupations, at what I shall believe to be the actual yearly income arising therefrom; and that I will perform my duty as assistant assessor of said borough with honesty and fidelity, according to the laws of this Commonwealth, without fear, favor, or affection, hatred, malice, or ill-will.

T. W. Morley.

Sworn and subscribed before me, a justice of the peace, in and for the county of Perry, the 13th day of November, A. D. 1876.

Theo. Fenn, *J. P.*]

Q. 4. I see that the oath which you have produced was administered to you by Theo. Fenn, justice of the peace of Perry county; is that the Mr. Fenn who is now justice of the peace for the borough of Marysville, in said county?

A. No, sir; it was his father.

Q. 5. Is the Mr. Fenn who administered the oath to you at that time now living or dead?

A. He is dead.

Q. 6. I understand that your duties as assistant assessor required you to take part in making only the triennial assessments; am I correct?

A. Only the triennial assessments as assistant assessor.

Q. 7. Your oath of office for the first term is dated November 13, 1876; how soon after that date did you and your associates perform the duty of making your first triennial assessment?

A. Immediately; I think that we started out the very day I made this oath; or not later than the day following.

Q. 8. In making your first triennial assessment, did you have occasion to visit the farm of Mr. Thomas Draper, then occupied by his tenant, Mr. George W. Kissinger?

A. We did.

Q. 9. Name the assessors, besides yourself, who visited Mr. Draper's farm at that time for the purpose of making that assessment.

A. Dr. A. J. Traver, as assessor, and Abraham Dissinger, as the other assistant assessor.

Q. 10. Did you all three go together to Mr. Draper's farm on that occasion, or did you go seperately?

A. We went together.

Q. 11. When the triennial assessment of 1879 was made, did you go to Mr. Draper's farm or not?

A. I did not.

Q. 12. Who made the assessment or valuation of that property at the triennial assessment of 1879?

[*Objected to as incompetent.*]

A. Dr. Traver and Mr. Dissinger started for Mr. Draper's place. I could not accompany them on account of being lame with rheumatism. They shortly returned to my place of business, and told me, or showed me, what they had done. They said they had met Mr. Kissinger, and found that there were no changes to be made in his personal property or live stock; and they were in favor of leaving the real estate stand at the valuation of the old assessment, if I was agreed. I said I was satisfied with such an arrangement.

Q. 13. When you were at the Draper farm with Dr. Traver and Mr. Dissinger, for the purpose of making your first triennial assessment, in

November, 1876, did you see Mr. George W. Kissinger, the tenant of the farm; and if so, where did you find him, and what was he doing at the time?

A. We found him at his barn; just what he was doing I can't positively say, but he was working at something about the barn-yard.

Q. 14. Did you make a valuation of his live stock there that day; and if so, where was the live stock at the time?

A. We did. His horned cattle were in a yard adjoining what would be called the barn-yard, and his horses were in the stable.

Q. 15. Do you remember how long you were there at the barn-yard on that occasion?

A. I couldn't say. I recollect we spent some time there. It was rather a cold, blustery day, and we were on the east side of the barn; and the sun was shining there and made it very pleasant; and we spent some time in conversation.

Q. 16. Is the east side of the barn towards the house?

A. It is.

Q. 17. And was that the side of the barn—the side towards the house—that you found warm and pleasant in the sunshine?

A. It was.

Q. 18. What is your recollection as to whether Mr. Kissinger did or did not have a hydraulic ram there on that farm to force water from the spring to the house at the time of the visit which you, Dr. Traver, and Mr. Dissinger made to the farm in November, 1876; and also as to whether there was or was not any conversation there at that time, between the assessors or any of them and Mr. Kissinger, with reference to such ram?

[*Objected to as leading.*]

A. As far as there being any conversation on that day, I would not like to swear positively, I having had so many conversations on the subject of that ram. I believe, from the best of my knowledge, that the ram was there at that time, but not in working order. I have a recollection that the first time I ever saw the discharge pipe there was no water flowing from it; and I believe it was upon this occasion, but I may be mistaken, from the fact that I was there afterwards. I have no recollection of being there from the time we made this assessment, for a year or two afterwards; and it might have been then that I saw the ram. But, as I said before, I think it was upon the occasion of the assessment.

Q. 19. Tell us whether you were ever there on the Draper farm in

company with Dr. Traver and Mr. Dissinger after you made the triennial assessment in November, 1876, or not?

A. I never was there with them.

Q. 20. What is the name of the cemetery that is situated just east of the Draper farm near the edge of the village of Marysville?

A. Chestnut Grove cemetery.

Q. 21. Is that cemetery owned by an association of individuals?

A. It is.

Q. 22. Are you one of the proprietors of it?

A. I am one of the stockholders.

Q. 23. What name do you use for the association which owns the cemetery?

A. Chestnut Grove Cemetery Association.

Q. 24. Will you tell us whether or not that association at one time contemplated or considered the question of procuring a hydraulic ram for the purpose of supplying the cemetery with water?

A. I do not know it to be the fact from having attended their meeting, as I seldom met with them, but I recollect one of the stockholders of the association saying to me that Mr. Wise, the superintendent, wanted them to put in a hydraulic ram for the purpose of throwing water up into the cemetery, but at what time this was I can't tell; but I think that it was about the time that Mr. Draper had put in this water-ram.

[*Answer objected to by Mr. Howson as not evidence.*]

Q. 25. Referring to your impression that at that time Mr. Draper had put in the water-ram on his farm, how do you get that impression? Was there any conversation between you stockholders at the time about the Draper ram or not?

[*Objected to as leading and incompetent, and as calling for guess-work, not fact.*]

A. By the stockholder who mentioned the matter to me saying about putting in a ram like the one on Draper's farm; that is what I get it from.

Q. 26. The Chestnut Grove cemetery, if I understand correctly, is situated on a hill by the side of the stream that flows from the spring on Mr. Draper's farm eastward into the Susquehanna. Am I correct about that?

A. The stream would flow into the Susquehanna if it was not intercepted by the railroad company and thrown into their reservoir; it formerly flowed into the Susquehanna.

Q. 27. Where was the water to be obtained that was to be thrown up to the cemetery by the ram, if one was procured?

[*Objected to as assuming.*]

A. From this stream that takes its source in the Draper spring—that seems to be the fountain-head of that spring—and flows past the cemetery.

Q. 28. Do you know whether there are other springs between the Draper spring and the cemetery that also help to feed that stream?

A. I do not from having ever seen them. I never followed up the stream; I am aware that there is more water flows past the cemetery —that is, the stream is stronger—than there is at the outlet of the Draper spring.

Q. 29. You have a brother, Stephen H. Morley, have you not?

A. I have.

Q. 30. I have been informed that his property was at one time sold out by the sheriff of Perry county; is my information correct or not?

A. His store was sold out by the sheriff; that is, the store goods, not the real estate.

Q. 31. How many times were his store goods ever sold out by the sheriff of Perry county?

A. But once.

Q. 32. I wish to fix the date of that sale of his store goods by the sheriff of Perry county; are you able to give me the date of that sale or not?

[*Objected to as not seeking the best evidence.*]

A. I am.

Q. 33. Will you please state the date of that sale?

[*Same objection.*]

A. March 13th and 14th, 1878.

Q. 34. What was the name of the sheriff who made the sale?

A. James A. Gray.

Q. 35. Did you purchase any goods at that sale?

A. I did.

Q. 36. Did the sheriff furnish you with a bill or inventory of the goods which you purchased at the sale?

A. He did.

Q. 37. How long after the sale did he furnish you with such bill or inventory?

A. I couldn't say exactly, but within two or three days.

Q. 38. Have you this bill or inventory here?

A. I have.

Q. 39. Will you please produce and exhibit it to the examiner in order that he may certify on the record the amount of the bill and any written memorandum on it.

A. Yes, sir; here it is.

[*The examiner certifies that the bill produced by the witness is written on twelve half sheets of foolscap; it commences with the words: "List of articles purchased by T. W. Morley at the sale of S. H. Morley's personal property, sold March 12th, 1878, by James A. Gray, Sheriff." Then follows a long list of the articles purchased, amounting in all to ten hundred and thirty-four dollars and fifty-five cents. At the end of the list is the following certificate: "I hereby certify that the above and foregoing is a true and correct list of articles purchased by T. W. Morley at the sale of Stephen H. Morley, as sold by me March 13th and 14th, 1878.*

Jas. A. Gray, Sh'ff."]

Q. 40. Was that certificate on the bill or inventory when the sheriff rendered it to you within a few days after the sale?

A. It was.

Q. 41. In July, 1883, I requested you to go to the farm formerly owned by Mr. Thomas Draper and occupied by his tenant, Mr. George W. Kissinger—it being the same farm which you, Dr. Traver, and Mr. Dissinger visited in November, 1876, as you have testified—and to measure the length of the wooden and iron pipes, and the size of the iron pipes there on the farm connected to the ram; did you comply with my request or not?

A. I did.

Q. 42. At the time when you made such measurements, did you make any written memorandum of them or not?

A. I did.

Q. 43. If you have that memorandum here, will you please produce and exhibit it to the examiner, in order that he may copy it upon the record?

A. Yes, sir; here it is.

[Witness produces small memorandum-book, containing the following memorandum:

"July 19, 83.
157 8-12 from spring to end of wood pipe.
Distance from wood pipe to ram 48 ft.
From end wood pipe to 1 1-2 pipe 31. 5 in.

From 2 in to ram 16-7.
Length of 1-2 in pipe 237 ft.
5 ft of 1-2 in pipe weigh 4 lb."

Q. 44. If I correctly understand your memorandum, the wooden pipe commences at the spring, and extends 157 feet and 8 inches towards the ram; at the end towards the ram, it is connected to a two-inch iron pipe, which extends 16 feet 7 inches further towards the ram; and this two-inch iron pipe, at its end towards the ram, is connected to an inch-and-a-half iron pipe, which extends 31 feet and 5 inches to the ram; is my understanding correct or not?

A. That is the understanding; that is the measurements that I have here.

[*Question reread to the witness at request of defendant's counsel, when witness continues:*]

My understanding of it is: Distance from the wood-pipe to ram, forty-eight feet; from the end of the wood-pipe to the end of the one and one half-inch pipe, thirty-one feet five inches; and the length of the two-inch pipe is sixteen feet seven inches, which makes the total forty-eight feet from the wood pipe to the ram.

Q. 45. Which of the two sizes of iron pipe comes next to the wood-pipe, and which comes next to the ram?

A. I am under the impression that the two-inch iron pipe, sixteen feet seven inches long, connects with the wood pipe, and the one and one half-inch pipe, thirty-one feet five inches long, connects the two-inch pipe with the ram. But I have got the word "ram" in there, I think, in the wrong place. In taking the measurements I measured the entire distance, forty-eight feet, from the wood pipe to the ram, and afterwards was requested to take the length of the inch-and-a-half pipe. I did so, and made my entry. Then I was requested to measure the two-inch pipe; I did so, and the entry of the length of the two-inch pipe appears in my memorandum after the entry of the one-and-a-half-inch pipe.

Q. 46. If I understand you, you are positive that there were forty-eight feet of iron pipe between the wooden pipe and the ram; am I correct?

A. Yes, sir; that is correct.

Q. 47. And that forty-eight feet of iron-pipe was divided into two sections, one consisting of two-inch pipe, and the other consisting of one-and-a-half-inch pipe, was it?

A. It was.

Q. 48. And it was 31 feet 5 inches from the end of the wooden pipe to the one-and-a-half inch-pipe, was it?

[*Objected to as leading and incompetent, in view of preceding answers.*]

A. Yes, sir.

Q. 49. If it was 31 feet 5 inches from the end of the wood pipe to the 1½ inch pipe, what size of pipe occupied that 31 feet 5 inches?

[*Objected to as argumentative, incompetent, and asking for the witness's guess-work, not his memory.*]

A. Two-inch pipe.

Q. 50. Then the memorandum goes on to state that it was 16 feet 7 inches from the two-inch pipe to the ram; if it was 16 feet 7 inches from the two-inch pipe to the ram, what size of pipe occupied that 16 feet 7 inches between the two-inch pipe and the ram?

[*Same objection and as incompetent in view of interrogatories 44 and 45, and the answers thereto.*]

A. One-and-a-half inch pipe.

Q. 51. Then it follows that the two-inch pipe was 31 feet 5 inches long, and the one-and-a-half inch pipe was 16 feet 7 inches long, does it not?

[*Same objection and objected to as asking for guess-work.*]

A. It does; that it is my measurement.

Q. 52. In putting my 44th question I made an error in respect to the respective lengths of the two-inch pipe and the one-and-a-half inch pipe, resulting from a miscalculation of the figures of your memorandum. In answering that question and the 45th question, you were apparently led into the same error, and in the same way; is such the case or not?

[*Objected to as leading, assuming, and altogether incompetent.*]

A. I could tell better if I could hear the questions again.

[At witness's request, questions and answers 44 and 45 are reread to him.]

I was led into the error in making the inch-and-a-half pipe the longer of the two. It should have been 16 feet and 7 inches instead of 31 feet and 5 inches. By taking the measurement of the two-inch pipe last or commencing at the ram, and measuring backwards toward the spring, caused me to enter the middle section of the pipe last on the memorandum; and hence I made the mistake in reporting the long pipe the shortest of the two.

Q. 53. It is entirely immaterial to the purposes of this case to know whether the two-inch pipe or the one-and-a-half inch pipe was the longer

of the two, but it is material to know what length of iron pipe intervened between the wooden pipe and the ram; and as this is the only material question, will you please state once more the aggregate length of the iron pipe between the end of the wooden pipe and the ram?

[*Objected to as incompetent and improper, especially so far as the statements embodied in the question are concerned; and because it does not lie in respondents' mouth, after having elected to examine the witness, and by leading questions, upon the very matters now stated to be immaterial, now to set up their immateriality; and because the nature of the witness' testimony as to these so-called immaterial points, is material so far, at least, as bears upon the question of the dependence to be placed upon the witness' measurements, or his recollection thereof, or his translation of the memorandum which he has produced.*

Mr. Hill replies that the only materiality there is in the matter is involved in the aggregate length of the iron pipe between the wooden pipe and the ram; and that is material only because it contradicts the complainants' witnesses upon that question, and demonstrates the utter unreliability of their memory and statements.]

A. The entire length of the iron pipe, from the end of the wooden pipe to the ram, is 48 feet.

Q. 54. Your memorandum states that the length of the one-half-inch pipe is 237 feet: where did that pipe extend from and to?

A. From the ram to the discharge, near the house.

Recess until 2.45, P. M.

Q. 55. At the time when your brother, S. H. Morley, was sold out by the sheriff, and just before that time, where were you living, and what business were you engaged in?

A. I was living in Marysville, in my own property, on Main street; I was employed by the Pennsylvania Railroad Company as passenger and freight agent at Marysville.

Q. 56. When you bought those goods at sheriff's sale, what did you do with them?

A. I increased the stock and went into the mercantile business—commenced selling.

Q. 57. Did you go into the mercantile business in the same store which your brother had occupied?

A. Yes, sir.

Q. 58. Did you continue to live in the same house that you lived in when you were railroad agent?

A. No, sir; I moved off from Main street into the house in which I now live, and was formerly occupied by my brother when he was sold out.

Q. 59. How long after the sheriff's sale of March 12–14, 1878, did you move into that house that had been occupied by your brother?

A. About two months, I think; I moved there about the first of May or in the early part of May—from the first to the middle of May.

Q. 60. And how long after the sheriff's sale did you take charge of the store and commence selling goods on your own account?

A. It was directly after I moved up; I didn't open up the store until I moved into the store building.

Q. 61. Have you occupied that building as a store and dwelling ever since?

A. I have.

[*The deposition of Mr. Morley was suspended at this point to resume the examination of Dr. Traver, who had just arrived from his house at Marysville.*

Complainants' counsel objects to this deposition, and particularly to that part thereof which refers to certain measurements alleged to have been made by this witness in July of the present year, at the request of defendants' counsel, as immaterial and not rebuttal.]

Cross-examination waived by Mr. Howson.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 31st day of December, 1883.

FRED. M. OTT,
Examiner.

THOS. W. MORLEY.

December 31, 1883, 10, P. M.

Examination resumed pursuant to adjournment.

Present, Mr. Storrow and Mr. Howson for complainants, and Mr. Jacobs for respondents.

OLIVER H. MILLER, *being produced, affirmed, and examined, saith:*

Examined by Mr. Jacobs:

My age is forty-seven; residence, Marysville, Perry county, Pa.; occu-

pation, painting this summer: I learned that trade, but have not been working at it for several years until this summer. I used to farm and have a team, and do hauling around there. I also have been constable of the borough of Marysville.

Q. 1. It has appeared in evidence that Thomas Draper, of Dover, Delaware, owned a farm within the limits of Marysville borough, which farm was, for some years, occupied and worked by George W. Kissinger; will you state whether you ever worked any part of that farm during the tenancy of Mr. Kissinger?

A. I did; in 1874 I farmed part of a field for Mr. Kissinger in corn; I had a man by the name of Ahn working for me driving my team at that time. He was up there working the corn. I went up to see how he was getting along with his work. Mr. Kissinger came to the field, and he and I got on the fence and were talking; while there I became dry, and asked Mr. Kissinger if there was a tin at the spring; he said there was, and I said I was going for a drink; he said he was dry and would go along; on the way to the spring we met one of the women—I don't recollect whether it was one of his daughters or his wife—carrying two buckets of water; I said, says I, "Mr. Kissinger, that's too hard work for women; why don't you make Mr. Draper dig you a well?" He says: "We are going to have something better than that. Mr. Draper promised me to have a battering-ram," as he said, "put in to throw the water up to the house." Now, I don't recollect that there was any other conversation about it particularly after that time. He didn't say where he was getting it, or who from, or nothing of that kind.

Q. 2. Did you ever work any part of the Draper farm during any season while Kissinger was tenant there?

A. No, sir.

Q. 3. If you have any book of accounts showing the time when Ahn worked for you, will you please produce it and point out to the examiner any entries relating thereto, in order that he may make a note of the same upon the record?

A. Here is the book; Mr. Ahn came to work for me on the 1st of June; and I was then keeping cigars and tobacco and mild drinks of different kinds for sale and also keeping boarders. Here is the account of the different things which I sold to Mr. Ahn and the credits of his labor at each settlement between us. He worked for me from the first of June, 1874, until the first of October of the same year.

[The book contains an account on pp. 134 and 151 headed

"1874
Aaron Ahn, Dr. to O. H. Miller."
The first item is
"June 5 Cigars" .05"

The account continues with various items of debit and "credit by labor," concluding with the item: "October 1st, credit by labor 2.24."]

Q. 4. Did Ahn ever work for you after October 1st, 1874?

A. No, sir; not to my recollection.

Q. 5. Please state whether or not a man by the name of John J. Preston ever boarded with you at Marysville; if so, when?

A. Yes, sir; he commenced boarding with me on the 18th day of June, 1874.

Q. 6. If you have any book containing any entry showing the date when he commenced boarding with you, will you please produce it and point out to the examiner, in order that he may make a copy of the same upon the record?

A. Here it is.

[The entry is as follows:
"1874
John T. Preston, Dr
June 18 commenced Boarding at Marysville Hotel at five dollars per week 5."]

Q. 7. You were then keeping the Marysville hotel, were you?

A. Yes, sir.

Q. 8. How long after that did you continue to keep it?

A. Till the first of October of the same year.

Q. 9. How long did Mr. Preston continue to board with you?

A. From the 18th of June, 1874, until sometime between the first of January and the first of March, 1875,—somewhere along there,—I can't recollect the time exactly.

Q. 10. After you quit keeping the Marysville hotel on the 1st of October, 1875, where did you go?

A. I moved into the house in which I now live, and which I had left when I moved into the Marysville hotel; when I moved October 1st, 1874, Mr. Preston and his wife, and a gentleman named Kingsmore, went with me, and remained with me until after the holidays.

Q. 11. Do you mean that all three of them remained with you until after the holidays?

A. Yes, sir.

Q. 12. What was Mr. Preston's business?

A. He was agent for a patent wash-machine—selling township rights through Perry county.

Q. 13. Do you remember anything of a pair of mules which Mr. Preston brought to Marysville whilst he was boarding with you?

[*Objected to as leading.*]

A. Yes, sir.

Q. 14. Do you know what he did with them?

A. Yes, sir; he sold them or traded them to Leonard Swartz.

Q. 15. How long before Mr. Preston left Marysville and quit boarding with you, did he dispose of those mules to Mr. Swartz?

[*Objected to as not seeking the best evidence of the matter inquired of.*]

A. I can't say that positively, but it was but a very short time after that that he left. It may have been a few days or a week, or it may have been longer than that; I won't state any definite time because I don't recollect.

Q. 16. Do you know what Mr. Swartz did with those mules?

[*Same objection.*]

A. I know what he did with them afterwards; yes, sir; he put them up at a public sale made by David Cowan, in the spring of 1875, but they did not bring what he wanted for them, and they were not sold; he afterwards took them up what we term the "big-river," to a place called New Buffalo, or in that neighborhood somewhere, and sold them; who to I cannot say.

[*Deposition objected to by Mr. Howson as immaterial and not rebuttal, and cross-examination, de bene esse.*]

Cross-Q. 17. From what time to what time were you keeping the Marysville hotel?

A. From the first of April, 1874, to the first of October, of the same year.

Cross-Q. 18. As I understand your testimony, on giving up that hotel you moved into the house which you now occupy in Marysville, and have been living there since that time continually, with the exception of a few months of the present year; is that correct?

A. I have lived there all the time; I have been away from February to April of this year, when I was in the coal region; but my family have been living there continually.

Cross-Q. 19. How far is that house from the Draper farm?

A. From the line of the Draper farm nearest my house, I suppose it would be eight or ten hundred yards by the public road; it might be less or it might be more; I couldn't say positively.

Cross-Q. 20. What business did you carry on during the years between, October, 1874 and the year 1880?

A. I kept a team and done hauling of various kinds; I kept store about a year in Marysville afterwards, but I still had my team at the same time.

Examination taken, reduced to writing, and by the witness affirmed and subscribed to before me, this 31st day of December, 1883.

FRED. M. OTT,
Examiner.

O. H. MILLER.

GEORGE W. DUNLAP, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

My age is twenty-four; residence, Altoona, Blair county, Pa.; occupation, dry goods clerk.

Q. 1. How long have you lived at Altoona?

A. Since February, 1880.

Q. 2. Where did you live before you went to live at Altoona?

A. At Newville, Cumberland county, Pennsylvania.

Q. 3. Do you know Mr. Daniel Drawbaugh of Eberly's Mills or Milltown, Cumberland county?

A. Yes, sir.

Q. 4. Were you ever in his shop at Milltown?

A. I was.

Q. 5. How many times were you ever in his shop?

A. Once.

Q. 6. In what year was that?

A. In 1876.

Q. 7. And in what month was it?

A. I believe, in August.

Q. 8. Were you at the Centennial exhibition at Philadelphia in 1876?

A. I was.

Q. 9. How many times were you at the Centennial exhibition?

A. Once.

Q. 10. How happened you to go to Mr. Daniel Drawbaugh's shop at Milltown in August, 1876?

A. At his brother Harry's request.

Q. 11. His brother Harry is Henry F. Drawbaugh?

A. Yes, sir.

Q. 12. Where was his brother Harry living, and what business was he engaged in at that time?

A. At Newville, engaged in business as a produce merchant.

Q. 13. What was he doing with the produce?

A. Selling it at New York and Philadelphia.

Q. 14. How did he get it to New York and Philadelphia?

A. He transported it by an individual car line—he had his own car, and got the railroad company to run it.

Q. 15. How happened you to be in the neighborhood of Milltown at the time when you went to Mr. Drawbaugh's shop in 1876?

A. I went over with Harry Drawbaugh on his return trip from New York.

Q. 16. Had you been to New York on that trip with him?

A. I had.

Q. 17. Was any freight brought back from New York in his car on that return trip?

A. We bought a load of cabbage; and I don't remember whether we bought anything else or not.

Q. 18. Who went with you to Mr. Daniel Drawbaugh's shop on that occasion?

A. Mr. H. F. Drawbaugh's son, Charles.

Q. 19. Any one else?

A. Nobody else.

Q. 20. Where was the train while you and Charles went over there?

A. At Bridgeport.

Q. 21. When Henry F. Drawbaugh requested or invited you to go over to his brother Daniel's shop, did he give you any reason why he wanted you to go over there; if so, what reason?

A. To see the talking-machine—he called it—and other curiosities which he would like me to see, and which he knew would interest me.

Q. 22. Where was Henry F. Drawbaugh while you and his son Charles were over at Daniel Drawbaugh's shop?

A. We were all in the shop together.

Q. 23. Did Henry F. Drawbaugh go over there with you?

A. Yes, sir; we were all in there together.

Q. 24. When you got into Daniel Drawbaugh's shop on that occasion, what machines or curiosities did you see there?

A. I saw lathes, a wire-making machine, an electric clock, a talking-machine, a fire-alarm, and a telegraph-machine, and some very fine hand-painting.

Q. 25. What was Mr. Daniel Drawbaugh doing while you were there in the shop?

A. He had been working at something; I don't know exactly what it was, but he was at our service just as soon as we got there.

Q. 26. How long did you remain there in the shop?

A. Probably an hour and a half.

Q. 27. You say he was at your service as soon as you got there; what did he do for you?

A. He explained all about the different machines.

Q. 28. How many talking-machines did you see there that day?

A. One.

Q. 29. What sort of a looking machine was that?

A. A black walnut box, eight or ten inches high, about five in width, with an inclined front, with a mouth-piece on the front side.

Q. 30. Please look at the instruments marked "F," "B," "C," "C reproduced," "I," "A," "D," "E," "L," "M," "G," "O," and "H," now placed on the table before you, and state whether you do or do not recognize among them any instrument which looks like the talking-machine which you described as a black walnut box with an inclined front and with a mouth-piece on the front.

A. This "H" is the one that seems to be familiar to me, and "B;" I recollect something of "B," especially this wire coil [indicating electro-magnet of exhibit "B,"]; but I have no recollection of the other ones.

Q. 31. Referring to the instrument which you saw that looked like this exhibit "H," how happened you to see it there that day—was anybody doing anything with it or to it?

[*Objected to as leading.*]

A. Mr. Drawbaugh was explaining its qualities to his brother; I was interested in some other work at the time and didn't hear what he said, only that it was a talking-machine.

Q. 32. How came you to see the instrument exhibit "B?"

A. In looking around over the benches.

Q. 33. Referring to the large instrument exhibit "H," did you see the inside of it at that time?

A. I think not.

Q. 34. You state that this visit to Mr. Drawbaugh's shop was on your return trip from New York; how many trips did you make with Mr. Henry F. Drawbaugh on his car that year—1876?

A. Two.

Q. 35. Was that visit on your first trip or second trip that year?

A. On my first trip.

Q. 36. When did you make your second trip that year on the cars with Mr. Henry F. Drawbaugh?

A. Two weeks later.

Q. 37. Was that second trip also made to New York and back?

A. Yes, sir.

Q. 38. Did Mr. Henry F. Drawbaugh bring back from New York any freight in his cars on that second trip with him; if so, what?

A. I think the cars were empty.

Q. 39. You have referred to two trips that you made with Mr. Henry F. Drawbaugh in 1876 on his cars; did you make any trips with him to New York after the year 1876; if so, how many?

A. I think, one in April, 1877.

Q. 40. And were those three trips all that you ever took with him on his train?

A. Yes, sir; just those three trips.

Q. 41. You have stated that you were never in Mr. Daniel Drawbaugh's shop but once; can you tell us how many times you were ever in the village of Milltown in your life?

A. Twice.

Q. 42. On which of those two occasions was it that you were in Mr. Drawbaugh's shop—the first or the last time?

A. The first time.

Q. 43. In what year was the last time that you were at Milltown?

A. In 1877.

Q. 44. How happened you to go to Milltown then?

A. Just for the same purpose that we went before; but Mr. Drawbaugh was not at home, or the shop was closed.

Q. 45. Then you didn't get into the shop at that time?

A. No, sir.

Q. 46. Who went over to Milltown with you the last time you went there, and where did you go from?

A. With H. F. Drawbaugh, from Bridgeport.

Q. 47. How happened you to be at Bridgeport with H. F. Drawbaugh at that time?

A. We had come from New York in the cars and had to wait for the Cumberland Valley train.

Q. 48. Was that on the occasion of your third trip to New York—the trip in April, 1877?

A. Yes, sir.

Q. 49. After you were in Mr. Drawbaugh's shop in August, 1876, and saw the talking-machines there, did you tell anybody about what you had seen there; if so, whom?

A. I told W. P. Chambers.

Q. 50. How soon after you were at Mr. Drawbaugh's shop and saw the talking-machines, did you tell Mr. Chambers about it?

A. Some time after I went home, after returning from New York from that trip.

Q. 51. Where did Mr. W. P. Chambers live at that time?

A. He lived on Railroad street, Newville, near the depot.

Q. 52. In what kind of a house?

A. A weather-boarded house.

Q. 53. What was his business?

A. He was a merchant tailor.

Q. 54. Do you know where he lives now?

A. I do.

Q. 55. Where?

A. In Harrisburg.

Q. 56. Did Mr. Chambers say anything when you told him about what you had seen at Mr. Drawbaugh's shop? If so, what?

[*Objected to as hearsay.*]

A. I don't remember of his replying. Mr. H. F. Drawbaugh said that he would take Chambers down some time to see for himself.

Q. 57. Was Mr. H. F. Drawbaugh present when you told Mr. Chambers?

A. Yes, sir; we were all together, in the band-room, at Newville.

Q. 58. Do you know whether Mr. Chambers afterwards went down to Mr. Drawbaugh's shop to see the talking-machines or not?

A. He did; about two weeks after my trip.

Q. 59. Did you have any conversation with him about it after he had been down there to see the talking-machines?

[*Objected to as hearsay.*]

A. Yes, sir; we talked of it.

Recess until 7.30 P. M.

Q. 60. Do you remember where you talked with him about it after he had been down to see it?

A. I can't say positively; it was either in the tailor-shop or in the band-room.

Q. 61. Were you a member of the band?

A. I was.

Q. 62. Was Henry F. Drawbaugh or Mr. Chambers—either of them—a member of the same band?

A. They were—both of them.

Q. 63. Do you know when Mr. Chambers moved into that weather-boarded house?

A. In the spring of 1877.

Q. 64. What house did he live in before he moved into that weather-boarded house?

A. In the brick house on the opposite side of the same street.

Q. 65. In your answers 49 to 52 inclusive, you state that after you were at Drawbaugh's shop, in August, 1876, and saw the talking-machine there, you told Mr. Chambers about it, and that he was living in the weather-boarded house at the time that you told him; am I to understand you that you did not not tell him about it till sometime in the year 1877?

[*Objected to as leading.*]

A. No, sir.

Q. 66. Please explain your meaning in full.

A. I misunderstood your question; I told Mr. Chambers about it on my first trip after I got home, after I was at Mr. Drawbaugh's shop for the first time.

Q. 67. Then if you misunderstood the time referred to in my question, I will put the question again: In which house was Mr. Chambers living at the time when you made your first visit to Mr. Drawbaugh's shop in August, 1876, and at the time when you told Mr. Chambers about that visit?

A. In the brick house on railroad street.

Q. 68. You have identified two instruments here, Exhibit "H" and Exhibit "B," as looking like talking-machines, which you saw at Mr. Drawbaugh's shop, in August, 1876; did you or did you not, at the same time, see any other instruments with mouth-pieces, lying around in Mr. Drawbaugh's shop?

[*Objected to as leading.*]

A. Some of those instruments here seem familiar; but I can't remember whether they are the precise ones that I saw there.

Q. 69. To the best of your recollection and belief, are Exhibit "H" and "B" the precise ones that you saw there?

[*Objected to as not calling for competent evidence.*]

A. They are.

[*Deposition objected to as not in rebuttal, and cross-examination, de bene esse, by Mr. Storrow.*]

Cross-Q. 70. Whose stores have you worked in, in Altoona?

A. I worked in a broom-store—a broom-factory—belonging to Kennedy and Walton, in which I was the superintendent. If you call that a store, it is the only one I have worked in except the one where I work now—that of Murray and Son.

Cross-Q. 71. What were your occupations at Newville between the spring of 1875 and the spring of 1880?

A. I went to school in 1875, and after that learned the tailoring trade.

Cross-Q. 72. With what tailor?

A. In W. P. Chambers & Co.'s merchant tailoring establishment.

Cross-Q. 73. How long did you stay with them?

A. With them, one year.

Cross-Q. 74. Where did you go after that?

A. I worked with Chambers' father a short time—then with Captain North.

Cross-Q. 75. When did you leave Captain North?

A. It was the first week in February four years ago that I left Captain North; that would be 1880.

Cross-Q. 76. What was Captain North's business?

A. Tailoring.

Cross-Q. 77. How long were you absent from home the first time you went to New York with Harry Drawbaugh?

A. Three days.

Cross-Q. 78. What time of day did you start, and what time of day did you get to New York?

A. We started at noon and got to New York early in the morning; I can't tell the exact time.

Cross-Q. 79. When did you leave New York?

A. We left New York—I don't know exactly what time we did leave.

Cross-Q. 80. Day or night?

A. It seems to me it was in the daytime—probably in the evening. I don't recollect exactly; but I think we went to the theater and started home after it was out, and got here to Harrisburg about eight or nine o'clock in the morning, and got over to Mr. Drawbaugh's shop about dinner time.

Cross-Q. 81. Where did you spend the night after your visit to Mr. Drawbaugh's shop?

A. At home.

Cross-Q. 82. Do you mean you got home the same day as your visit to Drawbaugh's shop?

A. Yes, sir; we got home in the evening.

Cross-Q. 83. Where did you and Harry and Charles take the cars, after leaving Drawbaugh's shop that day?

A. We got on the cars at Bridgeport and went home to Newville.

Cross-Q. 84. Do you remember what time of day it was when you left Bridgeport and what time you got home?

A. No, sir; but it was all in the afternoon.

Cross-Q. 85. Did you get home before dark?

A. Yes, sir.

Cross-Q. 86. Did you get home at the time you expected to get there when you started?

A. We expected it would take us three days, and it took us parts of three days—yes, sir.

Cross-Q. 87. What instrument did you play in the band?

A. First B-flat cornet.

Cross-Q. 88. What instrument did Mr. Chambers play, and what did Harry Drawbaugh play?

A. Mr. Chambers played E-flat cornet, and Mr. Drawbaugh played the chimes or lyre.

Cross-Q. 89. Where did your party get your dinner that day?

A. At John Drawbaugh's.

Cross-Q. 90. Please state anything else you remember that took place at Mr. Drawbaugh's shop that day.

A. Nothing else.

Cross-Q. 91. How long do you think you were there?

A. About an hour and a half, I would suppose.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 31st day of December, 1883.

FRED. M. OTT,
Examiner.

G. W. DUNLAP.

Adjourned until January 1, 1884, at 10 A. M.

JANUARY 1, 1884, 10.45, A. M.

Examination resumed pursuant to adjournment.

Present, Mr. Storrow for complaints, and Mr. Hill and Mr. Jacobs for respondents.

SAMUEL H. ETTLA, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

My age is fifty-seven; residence, Harrisburg, Pa.; occupation, keeping store.

Q. 1. What official positions have you held or do you hold in the community here?

A. I am a member of the common council of the city of Harrisburg for the Fourth ward.

Q. 2. Are you connected with any fire company of the city of Harrisburg? If so, with what company and in what capacity?

A. I am connected with the Hope fire company as recording secretary.

Q. 3. How long have you been recording secretary of the Hope fire company?

A. Twenty years with the exception of six months when I resigned and was reëlected again.

Q. 4. As recording secretary I suppose it is your duty to have custody of the books of the company and to make the records in them; is it?

A. Yes, sir.

Q. 5. I wish to know if the Hope fire company made any excursion to the Centennial Exhibition at Philadelphia in the year 1876, or not?

A. They did in the first week of September—5th, 6th, 7th, and 8th were the days.

Q. 6. Have you any record book here containing any entries relating to that excursion of that fire company to the Centennial Exhibition?

A. Yes, sir; this minute-book which contains an account of the expenses of the trip.

Q. 7. What minute-book is this?

A. It is the minute-book of Hope Fire Company No. 2.

Q. 8. Will you please point out to the examiner the items to which you refer as entries relating to the excursion of said company to the Centennial Exhibition of 1876?

A. On page 248 is recorded the report of the treasurer of the Centennial committee, which committee had charge of the company, and of the receipts and expenditures for the trip.

Q. 9. Among the various items in the report I notice a statement of one hundred dollars, which "was used in going to the Centennial, and expenses of the trip;" another entry of "telegraphs to Phil. 60 cents;" another entry, "hauling box and baggage from depot to 13th and Race streets $2.00;" another item is, "Lodging for company 13th and Race E. P. Thompson 56.25;" "Lindemuth and Lawrence as follows:

Meals for band	$74.00
Supper for Co. September 5th	32.00"

another item is

"State Capital band $25.00"

I judge from the several entries, which you have pointed out, that you took a band of music with you to the Centennial Exhibition on that excursion; am I correct?

A. Yes, sir; we had the State Capital band, or as it was commonly called, the Newmyer band—under the leadership of Mr. Newmyer.

Q. 10. Was that the only excursion which your fire company made to the Centennial Exhibition, or did you make other excursions there?

A. It was the only excursion of the company.

[*Deposition objected to as immaterial, and cross-examination waived by Mr. Storrow.*]

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 1st day of January, 1884.

FRED. M. OTT,
Examiner.

S. H. ETTLA.

Adjourned until January 2, 1884, at 10, A. M.

January 2, 1884.

Examination resumed.

Present, same counsel.

JOHN S. WEAVER, *being produced, affirmed, and examined, saith:*

Examined by Mr. Hill:

My age is forty-nine; residence, Marysville, Perry county, Penna.; occupation, merchant at present.

Q. 1. How long have you lived at Marysville?

A. Since 1862.

Q. 2. Do you know Mr. James Champion, who is here present?

A. Yes, sir.

Q. 3. Did he ever occupy a dwelling-house belonging to you?

A. Yes, sir; he did.

Q. 4. Where was that dwelling-house?

A. It is located on lot No. 27, facing on Williams street, Marysville.

Q. 5. Is there a church very near the house?

A. Lot 27 is the second lot from the corner of the street, and the United Brethern Church is on the opposite side of James street, at the corner of James and William streets.

Q. 6. The dwelling-house that Mr. Champion lived in, if I understand you, is on the second lot from the corner of James and William streets.

A. Yes, sir.

Q. 7. For what cause did Mr. Champion move away from that house?

A. Owing to the house being damaged by fire.

Q. 8. Was the house insured at the time of the fire?

A. Yes, sir.

Q. 9. If you have the policy of insurance here, will you please produce it, in order that the examiner may certify from it such matters as may be desired in evidence?

A. Yes, sir; here it is.

[Witness produces policy dated July 20, 1875, No. 105, 471, issued by the Farmers' Fire Insurance Company, signed by G. Edw. Hersh, president, D. Strickler, secretary, and Alex. Blessing, agent, purporting to insure "J. S. Weaver, of Marysville, Pa., against loss or damage by fire and lightning, to the amount of twenty-two hundred dollars, as follows:

On his two-storied frame dwelling-house, 16x26 feet, and two-story frame kitchen, 12x14 feet, attached, situate on corner of Ann and James streets, Marysville, Perry county, Pa., $1,500.

On his household furniture, sewing-machine, and wearing apparel therein, $400.

On his two-story frame tenant dwelling-house, 12x16 feet, and one-story kitchen, 10x12 feet, attached, situate on south side of Williams streets, Marysville, Pa., $300;" (footing up $2,200;) for the term of three years, commencing on the 18th day of July, one thousand eight hundred and seventy-five, at twelve o'clock at noon, and ending on the 18th day of July, one thousand eight hundred and seventy-eight, at twelve o'clock at noon. Endorsed on the back of said policy are the following words and figures, to wit:

"Harrisburg, Pa., Dec. 17, 1877. Received of the Farmers' Fire Ins. Co., of York, Pa., through Alex Blessing, agent at Harrisburg, Pa., the sum of forty dollars, being in full satisfaction of all claims and demands against said company for loss and damage by the fire which occurred on the first day of December, 1877, to the property insured under this policy; in consideration of which the amount insured is hereby reduced in the above-mentioned sum, leaving now insured under this policy, the sum of twenty-one hundred and sixty dollars, viz:

Dwelling on corner of James and Ann streets,	1,500 00
Furniture, etc., therein,	400 00
On dwelling on William street,	260 00
	2,160 00

J. S. WEAVER."]

Q. 10. I notice that your said policy insured two dwellings, to wit: One for $1,500, and another, which is described as a two-story frame tenant dwelling house, etc., etc., $300; which of these two houses was the one that Mr. Champion lived in, and that was damaged by the fire?

A. The one insured for $300.

Q. 11. When was this endorsement, commencing with the words "Harrisburg, Pa., Dec. 17th, 1877," and ending with the signature "J. S. Weaver," written upon the back or outside of the policy?

A. On December the 17th, 1877.

Q. 12. Did you, on that day, make a settlement with Mr. Blessing for the loss or damage, to be paid by the company?

A. Yes, sir.

Q. 13. When did that fire take place, which drove Mr. Champion out of your tenant-house?

A. On Saturday evening, December the first, 1877, at or about eight o'clock in the evening.

Q. 14. How did it happen that the fire was prevented from doing any greater damage to the house?

A. There being a protracted meeting in progress in the United Breth-

ren church close by, when the alarm of fire was given, the congregation rushed out and extinguished the fire.

Q. 15. Did Mr. Champion ever live in any house of yours afterwards?

A. No, sir.

Q. 16. Do you remember about how long he occupied that house before the fire drove him out?

A. I can't say; it was several months, though, but I couldn't form an idea.

Q. 17. Are you sure that it was over five or six weeks?

[*Objected to as leading.*]

A. I couldn't give any time.

Cross-examined by Mr. Storrow:

Cross-Q. 18. Whereabouts is your store in Marysville?

A. On the corner of Ann and James streets.

Cross-Q. 19. Is that the same building that is described in that policy?

A. The one that is insured for $1,500.

Cross-Q. 20. Is it between the railroad and the river, or above the railroad?

A. It is on the opposite side—above the railroad.

Cross-Q. 21. What do you deal in at your store?

A. Dry goods, groceries, and notions.

Cross-Q. 22. How long have you kept store in Marysville?

A. I think it is about seven years, or a little over that.

Cross-Q. 23. What was your occupation at the time when this policy was taken out in July, 1875?

A. I had charge of the car-inspecting department of the Northern Central railway, at Marysville.

Examination taken, reduced to writing, and by the witness affirmed and subscribed to before me, this 2d day of January, 1884.

FRED. M. OTT,
Examiner.

J. S. WEAVER.

JAMES CHAMPION, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

My age is forty-six; residence, Harrisburg, Pa.; occupation, laborer.

Q. 1. Did you formerly reside at Dauphin, Dauphin county, Pa.?

A. Yes, sir.

Q. 2. To what place did you move when you left Dauphin?

A. To Marysville, Perry county, Pa.

Q. 3. Marysville is nearly opposite to Dauphin, with the Susquehanna river between, is it not?

A. Yes, sir.

Q. 4. About what time did you move from Dauphin to Marysville?

A. Sometime near the first of March in the spring of 1876.

Q. 5. Into whose house did you first move when you moved from Dauphin to Marysville?

A. A widow lady by the name of Leah Miller.

Q. 6. How long did you live in Mrs. Miller's house?

A. Something near one year.

Q. 7. Into what house did you move when you moved out of Mrs. Miller's house?

A. I moved into a house on the hill, as we called it, near the Evangelical church.

Q. 8. When you moved out of the house on the hill, near the Evangelical church, whose house did you move into?

A. John S. Weaver's.

Q. 9. How long did you occupy John S. Weaver's house?

A. Something like a month; it might have been a little more or a little less; but I think no less; I think it was just about one month.

Q. 10. What was the cause of your moving out of Mr. Weaver's house?

A. The house was damaged by fire and my goods were burnt up.

Q. 11. When did that fire occur?

A. On Saturday evening, the first night of December, 1877.

Q. 12. How was the house saved from any greater injury than happened to it?

A. The fire had originated from the stove-pipe in the second story and smouldered for a while before breaking out, and there was a protracted effort going on in the United Brethen church near by, and I and my family were all there. When the fire broke out the people all left the church—and the stores were near—and they came with their buckets and put the fire out.

Q. 13. After you were driven out of that house by the fire, how long did you continue to live at Marysville, and where did you move to from Marysville?

A. I lived in Marysville after the fire occured until the spring of 1880. From there I moved on Emanuel Keller's farm in Perry county, about seven miles up the Fishing Creek valley road from Marysville. I moved from there to Lebanon, Lebanon county, and from there to Harrisburg.

Q. 14. While you were living at Marysville, did you or not become acquainted with Mr. George W. Kissinger, who occupied the Draper farm a short distance up the valley back of Marysville; or with his son-in-law, Mr. J. C. Zimmerman?

A. I became acquainted with Mr. James Zimmerman shortly before I moved to Marysville, and with Mr. Kissinger shortly after I moved to Marysville—within a few days.

Q. 15. Will you tell us how you happened to become acquainted with Mr. George W. Kissinger, and state the circumstances under which you made his acquaintance?

A. I was working on the railroad, and Mr. James Zimmerman was working with me. I invited him to my house, and he came on Sunday to visit me. After we had had our dinners he insisted that I should go home with him then. It was only a short distance; I went along with him. After we had remained at his house a short time—probably an hour—it was time for me to go home again, and he took me across the fields—a nearer way home. Right at the cemetery or graveyard fence, there we met Mr. George W. Kissinger, the father-in-law of Zimmerman, and Mr. Leonard Swartz, and I had an introduction to each of them.

Q. 16. Where was Mr. Zimmerman living at the time when you visited him that Sunday?

A. He was living with his father-in-law, George W. Kissinger, on the Draper farm, near Marysville.

Q. 17. If you were again at the house of Mr. Kissinger on the Draper farm, will you state, as near as you can, when you were there the next time after the Sunday visit which you have just described?

A. I was there again—I can't say positively the month—but either the last of May or beginning of June—either in May or June, 1876.

Q. 18. How happened you to go there then, and did any one go with you?

A. Yes, sir; my wife went with me. Myself and my lady went

there to see about getting cherries when they got ripe; they had a great many trees, and I had been told by Zimmerman and others that they were very full, and we went there to engage cherries.

Q. 19. If you went there afterwards again will you please tell us when you next were there; who, if anybody, went with you, and why you went?

A. The next time that I went there my wife and two daughters went with me; it was somewheres I presume—I can't say the day—but I think it was in July, 1876, from the 1st to the 15th at the farthest. We went to pick cherries.

Q. 20. To pick cherries that you had engaged at your visit about the first of June?

A. Yes, sir.

Q. 21. When you engaged cherries about the 1st of June, 1876, what sort of a bargain did you make for them?

A. We were to pick them for the one half; that was the bargain.

Q. 22. When you picked the cherries in July, 1876, did you deliver one half of them to Mr. Kissinger?

A. We had our buckets filled with cherries—all but the small one—we had two buckets filled; and I took one of the large buckets to Mrs. Kissinger, and she wouldn't have them. She told me to go back to the tree and pick them full and take them home; that she had more than she knew what to do with.

Q. 23. Please describe where those cherry-trees stood from which you picked the cherries on that occasion.

A. The cherry-tree stood in the second field opposite to the barn; there was a field right back of the barn, and one to the right of the barn as you go from the house to the barn; it was in that field, just over the fence, that the first tree stood that we picked cherries from.

Q. 24. When you went to the place to pick cherries by what way did you go?

A. We went up the valley road till we came to the gate; and then down past the house to the barn, and then to the cherry-trees to the right of the barn.

Q. 25. You have now described the occasions when you were at the Kissinger place in 1876, to wit: The Sunday early in the spring when you went up there with Mr. Zimmerman; the time when you engaged the cherries about the 1st of June, and the time when you picked the cherries in the early part of July; if you were again at Mr. Kissinger's

place, will you tell us how you happened to go there on that next occasion, and about what time it was?

A. I was there again. I was sent by the man that I was working for—Leonard Swartz—to get a plow. I couldn't say exactly the time that it was; I commenced working for Mr. Swartz in June, 1877, and I worked for him off and on until in the fall. Two days before I was burnt out I done the last work for him.

Q. 26. What kind of a plow, and whose plow was it that Mr. Swartz sent you there to get?

A. It was a one-horse plow—a kind of a cultivator or shovel plow—and I think that it was Mr. Swartz's, but I wouldn't say that for certain.

Q. 27. Do you remember about what time of year it was?

A. I won't be positive, but I think it was just after wheat harvest—I think we were going to take out the potatoes—plow them up.

Recess until two, P. M.

Q. 28. Please state whether or not you were ever again at Mr. Kissinger's place after the time when you went for the cultivator plow.

A. Yes, sir; I was there once after that on business.

Q. 29. What business?

A. I went to get some pumpkins that Mr. Kissinger had promised me.

Q. 30. Did you get the pumpkins?

A. Yes, sir.

Q. 31. What did you do with them?

A. I took them to my home in Marysville.

Q. 32. To what house?

A. The house on the hill near the Evangelical church, where I was living at that time.

Q. 33. What became of those pumpkins?

A. I moved in a day or two after that to John S. Weaver's house, and what pumpkins had not been used were destroyed by the fire of December 1, 1877, that partly burned that house.

Q. 34. When was the last time that you were ever at Mr. George W. Kissinger's house or barn, or in the valley down between the house and barn?

A. On or about November 1, 1877—the time when I got the pumpkins.

Q. 35. How positive are you about that?

A. I am positive. I have reasons to know that I was not there after that; for I think I only worked one day for Mr. Swartz after that. I crossed over the farm after that, gunning, at one time, but did not go to the house nor the barn, nor between them.

Q. 36. How many times was your wife ever up there to Mr. Kissinger's place with you?

A. Twice.

Q. 37. You have testified that she was there with you about the 1st of June, 1876, when you engaged the cherries, and that she was there with you in July, 1876, to pick the cherries. Are those the two occasions that you refer to as the only times that your wife was ever there with you?

A. Yes, sir.

Q. 38. What was Mr. Leonard Swartz's business, and where did he live?

A. He was a trucker and a dairyman; he lived about one mile and a quarter from Marysville, on the Fishing Creek valley road, adjoining the Kissinger farm.

Q. 39. Which farm lay nearest to the village of Marysville?

A. The Kissinger farm.

Q. 40. You say Mr. Swartz was a trucker; what do you mean by that?

A. I don't know whether you would call him a farmer or a trucker; he raised vegetables and marketed them, but sold no grain, I think. I think his farm was within the borough limits, but I won't be certain about that.

Q. 41. You have stated, in your fifteenth answer, that on the Sunday when you first become acquainted with George W. Kissinger, his son-in-law, Mr. James Zimmerman, came to your house on your invitation, and after dinner you went to his home with him on his invitation; did he take dinner with you that day at your house?

A. Yes, sir.

Q. 42. Was that the last time that he ever took dinner with you at your house, or did he dine there afterwards?

A. It was the last time.

Q. 43. Did anybody come there with him that day?

A. Yes, sir.

Q. 44. Who?

A. He came himself, and I will say for certain that there was one

of his children with him, but I won't say for certain that there were two children with him, although I am under the impression that there were two children with him—one I am confident—his own child.

Q. 45. What house were you living in at the time when James Zimmerman took dinner with you that Sunday?

A. Mrs. Leah Miller's house.

Q. 46. Where was that house situated?

A. It was situated in the village of Marysville, between the Susquehanna river and the Pennsylvania railroad, about half way between Haley station and Marysville station.

Q. 47. How close is it to the bank of the Susquehanna river?

A. It is about one hundred and ten, I should judge, or may be one hundred and fifteen feet from low-water mark.

Q. 48. While Mr. James Zimmerman was there at your house on that Sunday on which he took dinner there, did any conversation arise of which you now have any recollection of; if so, what?

A. I recollect that the river was very high, and that it came up near the house—within about thirty feet, I think, of the house. I remarked to him that I was afraid at the time that the water was going to come on and get into the well. I don't remember exactly what he said, but it was talked over that the rains were over—he called those a sort of an equinoctial storm; that we had had a very rainy season, and now the rains were over and that the river would go down, mentioning that he had the water very handy; then he mentioned what a high and dry place he had to live, where there was no danger of anything of the kind, and that he lived rent free, with the exception of shaving his father-in-law, Mr. Kissinger; that was all he had to pay, and he was bragging about it. Another conversation we had at the same time—I remember it just as well as if it was yesterday—was how he became acquainted with his wife. He was shaving Mr. Kissinger at a mill somewhere—I don't know what place it was—and in that way he became acquainted with the daughter. He mentioned before my family and myself that he had a very pleasant place to live, rent free, as I have stated, but that they had their water to carry up a hill, where they were living at that time. He mentioned this when we were speaking about our water. He mentioned that they had a conveyance—he either said that they had a conveyance or that they were going to get a conveyance; at one time he told me that they were going to get a conveyance, but at this time I

think he told me that they had a conveyance—to carry the water up the hill and up to the house.

Q. 49. Have you any recollection as to whether he stated, that Sunday at your house, the name of the water conveyance that Mr. Kissinger had gotten, or expected to get, to convey the water up the hill to the house?

A. I think that it was on that occasion—that Sunday—that he told me what it was to be; I think that he called it a hydraulic ram. I recollect that I explained to my wife that it was what we called in the west—and told her where there was one there—that it was what we called a battering-ram; it forced the water up, and pounded a good deal.

Q. 50. You have stated that after dinner that day you accompanied Mr. Zimmerman to his home in the house occupied by his father-in-law, Mr. Kissinger, on the Draper farm; did you have any conversation there at Zimmerman's home that day with reference to the hydraulic ram?

A. I don't think we did; I don't recollect that we did—in the house.

Q. 51. You have stated that your second visit to Mr. Kissinger's house was along about the 1st of June, 1876, and that your wife accompanied you; was there any conversation at Mr. Kissinger's house that day with reference to the hydraulic ram or the getting of water up to the house?

A. I don't think that I and my wife saw any one that day except Mr. Kissinger and Mrs. Zimmerman; James Zimmerman was away at work. On that occasion I can recollect nothing except with reference to our bargain for cherries—what we went for was for early cherries and failed to get them; and then is when we made the bargain to come and get the late ones.

Q. 52. You have stated that your third visit to the Kissinger place was in the early part of July, 1876, when you went with your wife and two daughters to pick the cherries, and that on that occasion you went from the house down the hill, and up to the barn, out to where the cherry-trees were; will you tell us whether the subject of Mr. Kissinger's hydraulic ram or water conveyance was mentioned by any of your party, or anybody else there that day?

[*Objected to as leading, and as assuming that Kissinger had a ram.*]

A. As we passed across the valley or hollow between the house and the barn, I showed my wife where the spring was where they had to carry the water from to the house—and that Zimmerman had mentioned that they had to carry it from—we then passed up the hill and

through the fence—either at a gate or a bars—I won't be certain which, but I think it was a gate, and went into the field. Just when we got through the gate there was some timber lying there; my wife asked me what the timber was for, as there had been work done upon it. I told her that it was for conveying the water up the hill, as Zimmerman had told us about, and I explained to her as best I could how the water was to be conveyed up the hill. I was just thinking—and I have told it, I suppose, about twenty times—of something that happened at that cherry-picking that brings it so fresh to my memory. I don't think I could forget it if I could live to be a hundred years old. That was in regard to a long dinner-bucket—or a tin bucket that had something in it to eat, that belonged to some one that was there picking cherries—there were others there besides ourselves. I had went to the cherry-tree, where that bucket was sitting, to get a ladder, and a pig got at that bucket and got the bale of the bucket over his head, and we had quite a circus there for a time. I remember it as well as if it was yesterday.

Q. 53. You say that the timber which you saw just as you went through the gate or fence near the barn, and which your wife asked you about, had had some work done to it. What work had been done to it?

A. I think the most of it had been bored; some of it had holes bored through it, and there were blocks and other pieces of timber there. I remarked to my wife that if we had it for wood, how nicely we could use it. It was fit for nothing but stove-wood.

Q. 54. What was fit for nothing but stove-wood—the bored timber, or the pieces, or the whole of it?

A. No, sir; I mean a pile that was there—ends and wood where they had squared the logs up—stove-wood and bark, and such stuff that was there.

Q. 55. The bored timber—was that round or squared timber?

A. I think it was round.

Q. 56. And how were the holes bored—lengthwise or crosswise of the timber?

A. Lengthwise of the logs.

Q. 57. You have stated that your fourth visit to Mr. Kissinger's place was in 1877. When you went at Mr. Leonard Swartz's request to get the cultivator plow, did you get the plow? If so, where did you you find it?

A. I did. I got the plow near the hog-pen and corn-crib. The hog-

pen was right to the left of the path, close to the barn. I think there was just one pair of bars between the hog-pen and the horse stable, or overshot of the barn. The overshot hangs over the entrance to the horse stable.

Q. 58. By what road or course did you go from Mr. Swartz's place to Mr. Kissinger's barn on that occasion when you went for the plow?

A. I went across—cornerways—of the peach orchard.

Q. 59. Do you mean that you went cornerways across Mr. Swartz's field, and then across Mr. Kissinger's peach orchard?

A. No, sir; I mean that I went out of Mr. Swartz's yard, and across the road, over the fence into Mr. Kissinger's peach orchard, and cornerways across the peach orchard to the barn.

Q. 60. Did Mr. Kissinger's peach orchard lie in a westerly direction from his house and barn?

A. From his house it did, yes, sir; westerly is up the valley further from Marysville.

Q. 61. When you went down there for the plow that day, did you see any member of Mr. Kissinger's or Mr. Zimmerman's family?

A. I saw Mr. Zimmerman to speak to him; I saw Mr. Kissinger from a distance.

Q. 62. Where did you meet Mr. Zimmerman on that occasion, and what was he doing?

A. I met him about half way between the house and the spring; he was going to the spring for a bucket of water.

Q. 63. Did you have any conversation with him; and if so, what conversation?

A. There was something mentioned in regard to carrying the water up the hill, and in regard to the conveyance or hydraulic ram being more bother than it was worth; it was out of repair.

Q. 64. Who said it was more bother than it was worth, and that it was out of repair?

A. Zimmerman.

Q. 65. You have testified that the fifth and last occasion when you were there at Mr. Kissinger's place was when you got the pumpkins, a portion of which were afterwards destroyed by the fire of December 1, 1877; when you were at Mr. Kissinger's place to get those pumpkins was anything said about the hydraulic ram?

A. I think not; not that I recollect of. I saw no one but Mr. Kissinger that day to talk with.

Q. 66. Where were the pumpkins?

A. They were in the entry or feeding-room of the horse stable. The entry and the feeding-room are the same

Q. 67. How happened you to be getting pumpkins from Mr. Kissinger?

A. I had brought some pumpkin-seed—we call them squash-seeds—from the State of Indiana. I gave them to Mr. Kissinger, and he was going to plant them and give me some pumpkins, provided he raised any; if he planted them I don't recollect, but he didn't raise any from that lot of seed, or at least didn't say anything to me about it. I afterwards got hold of a different kind of pumpkins and gave Mr. Kissinger one; he agreed to give me pumpkins again if he raised any from that pumpkin, and he did raise them and gave me some.

Q. 68. When you went across from Mr. Swartz's house to Mr. Kissinger's barn for the plow, had you any reason for going across cornerwise through the peach orchard instead of going down the public road to Mr. Kissinger's front gate and then by his house?

A. Yes, sir; I had three reasons. The first was, it was much nearer; the next was, that peaches were getting good; another one was that he had some very bad dogs, and I aimed at getting down to the barn to see some of the men-folks without facing the dogs. It was at the noon hour that I went down. They were bad dogs, and I was very much afraid of them.

Cross-examined by Mr. Storrow:

Cross-Q. 69. What was your occupation at Marysville?

A. I was laboring most of the time.

Cross-Q. 70. For whom?

A. During the time I was in Marysville I was laboring for the Pennsylvania and Northern Central railroad companies the greater part of the time.

Cross-Q. 71. What work did you do for them?

A. For the Pennsylvania company I worked on the track in the floating gang, and I watched for the Pennsylvania on the Northern Central bridge—the upper wooden one at Dauphin—during the strike. For the Northern Central Railroad Company I put in nine months in the blacksmith shops without the loss of an hour.

Cross-Q. 72. When was that?

A. That was the fall of 1879, and the spring of 1880.

Cross-Q. 73. Whom did you work for when you first went to Marysville?

A. When I first moved to Marysville I worked for Albert King.

Cross-Q. 74. How long, and for whom next?

A. I think I worked for Albert King until I had two pay days, commencing in February. The pay days were once a month. I next worked for myself at paper-hanging.

Cross-Q. 76. How long for yourself, and for whom next?

A. I can't tell how long I worked at paper-hanging, but they were only odd jobs as I got them. I went to work for Mr. Leonard Swartz in harvest of 1876.

Cross-Q. 77. How long for Swartz, and for whom next?

A. I worked for Swartz off and on until Thanksgiving day—I have made a mistake in my date—I didn't work any at all for Leonard Swartz in 1876. I have made a mistake in my time.

Cross-Q. 78. I will ask you again; after leaving King, how long did you work for yourself, and whom did you work for next?

A. I worked for myself, when I could get the work to do, until some time in July, 1876; I then crossed the river and worked for a man by the name of Isaac Colbaugh, in Dauphin county.

Cross-Q. 79. Whereabouts in Dauphin county; what did you do for him, and how long did you work for him?

A. Near Linglestown—I can't tell in what township—I was cutting wood; I worked for him about two weeks, as near as I can remember.

Cross-Q. 80. How far from the river did you work for him?

A. I think it was about two miles; it was opposite what is called Coxestown—between there and Rockville.

Cross-Q. 81. Where did you live while you worked for him?

A. In the Widow Miller's property, in Marysville.

Cross-Q. 82. Did you go home every night?

A. No, sir.

Cross-Q. 83. Did you go home at all?

A. Yes, sir.

Cross-Q. 84. How many times while you were working for him, and when?

A. I couldn't say how many times for certain, but the first time I went home I think I went home on Friday.

Cross-Q. 85. Whom did you work for next, and how long?

A. I worked for Theo. Fenn, the next that I mind of that amounted to anything. I worked for him off and on until frost—cool weather.

Cross-Q. 86. Who was Theo. Fenn, and what did you do for him?

A. He was an older brother of the present 'Squire Fenn, and a son of the old squire; I worked on a farm for him; he was farming.

Cross-Q. 87. Whom did you work for next, and how long?

A. The next work that I done, I think, was to pick winter apples for myself. I sold what I didn't keep for myself. I can't tell how long I was at it. I and my wife were both at it. There was but very little work to be had at that time.

Cross-Q. 88. Where did you pick apples?

A. In what was called Allen's Cove, for a farmer by the name of John Collier. He owned the orchard. I got two thirds for picking them.

Cross-Q. 89. Whom did you work for next? When, and for how long?

A. I worked for about three days, I think, for a man by the name of Seidel, at the forge, cutting ice. That was in the latter part of the year 1876—the last work that I done in that year to amount to anything.

Cross-Q. 90. Whom did you work for in the first half of 1877, and for how long?

A. The Pennsylvania Railroad Company; only a few days and nights shoveling snow—nights and day may be for a few days; making forty or fifty hours.

Cross-Q. 91. State who else you worked for in the first half of 1877.

A. I don't think I done any work then, after the snow shoveling, until about March, or some time in March or April. The floating gang was then put on the road again, and I went on with William King, the father of Albert.

Cross-Q. 92. Leonard Swartz's farm was the next place west of Kissinger's, was it not?

A. Yes, sir.

Cross-Q. 93. Who first spoke to you about testifying in this case?

A. The first that I ever knew anything about it was through a man by the name of Seidel, of Lebanon, and 'Squire Fenn.

Cross-Q. 94. Did they come to you together about it?

A. Yes, sir; they came to my house at Lebanon.

Cross-Q. 95. When was that?

A. I think it was in December. I could give a permanent answer

if I was at home; I would know the time by my daughter's marriage. I think she was married in September—not December.

Cross-Q. 96. When did you leave Lebanon?

A. The Tuesday before this last Christmas.

Cross-Q. 97. And have only resided in Harrisburg about ten days; is that the fact?

A. Yes, sir.

Cross-Q. 98. What work have you been doing in Harrisburg since you have been here?

A. Nothing at all.

Cross-Q. 99. Where are you living in Harrisburg?

A. I live in River alley, between Washington avenue and Vine street.

Cross-Q. 100. How long did you live at Lebanon?

A. I moved to Lebanon in February, 1881.

Cross-Q. 101. Whom have you worked for in Lebanon?

A. My first work in Lebanon was for the Lebanon Manufacturing Company, in their blacksmith shop, in 1881. My next was for myself. I am a paper-hanger by trade, and when I can get a job I work for myself. In the fall of 1881, I got a sciopticon outfit, and have been traveling with that giving exhibitions most of the time since, in the fall and winter months. In the summer season I have been paper-hanging and doing odd jobs.

Cross-Q. 102. You say that Mr. Seidel came to you with 'Squire Fenn. What is Mr Seidel's name, where does he live, and what is his business?

A. I think that his name is John—I won't say for certain, but think it is—he lives at the corner of Tenth and Cumberland streets, Lebanon. The number I don't know. He was formerly an iron-master; but I think he has retired from business, and his sons have taken charge.

Re-direct by Mr. Hill:

Q. Q. 103. You state that when you first went to work at Marysville you worked for Albert King; what kind of work did you do for him?

A. On the floating gang of the Pennsylvania railroad putting in ties, breaking stone, and general work.

Q. Q. 104. I will ask the examiner to read your 94th and 95th questions and answers to you, and then will ask you what month you mean in the 95th answer as the month in which those gentlemen came to see you.

A. I should not like to say that it was September, but it was not as late as December; it was either September or October, but I am pretty certain it was September; when I said December, I was trying to get at September; it was pretty warm weather, and we had the room open.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 2d day of January, 1884.

FRED. M. OTT,
Examiner.

J. CHAMPION.

Adjourned until January 3, 1884, at 10, A. M.

January 3, 1884, 10, A. M.

Examination resumed.

Present, same counsel.

Mrs. SARAH J. CHAMPION, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

I am the wife of James Champion, who was examined as a witness in this case here yesterday.

Q. 1. How long have you been married to Mr. Champion?

A. I was married in August, 1864.

Q. 2. Did you at one time reside at Marysville, Perry county?

A. Yes, sir.

Q. 3. Where were you living just before you moved to Marysville?

A. In Dauphin.

Q. 4. Do you remember what year it was when you and your husband moved to Marysville?

A. In the spring of 1876.

Q. 5. Do you remember about what time time it was in the spring?

A. It was somewhere near the 20th of March.

Q. 6. For whom did your husband first work at Marysville?

A. Mr. Allen King, on the floating gang on the Pennsylvania railroad.

Q. 7. Did he commence to work on the floating gang before or after you moved to Marysville?

A. He commenced in the February before we moved in March.

Q. 8. In whose house did you first live in Marysville, in 1876?

A. Mrs. Leah Miller's.

Q. 9. You were requested yesterday to seach your papers to see if you could find any rent receipt for rent due while you lived in Mrs. Miller's house; did you do so?

A. Yes, sir.

Q. 10. With what success?

A. I searched through some old letters and papers in an old stand drawer upstairs and I found an old pocket-book, that I had almost forgotten, and in it I found this old receipt for rent due to Mrs. Miller; the receipt was written by Mrs. Jennie Sheaffer for her husband, by Mrs. Miller's direction.

Q. 11. Will you please produce the receipt in order that I may put it in evidence?

A. Yes, sir; here it is.

[Witness produces a receipt which is put in evidence, to be marked "Exhibit Champion Rent Receipt;" the receipt is as follows:

"Marysville, June 6, 1876. Received of Mrs. Champion $3 dollars for Rent of Mrs. Miller's house.

Henry Sheaffer."]

Q. 12. Do you remember what the rent of that house was per month?

A. Five dollars.

Q. 13. Do you remember how this particular payment happened to be $3?

A. Yes, sir; Mrs. Miller asked me to whitewash the house; that was in May, and I did it and she said she would allow me two dollars on the rent. And when I made the payment it was to finish out the month's rent for May.

Q. 14. Do you remember how it happened that Mrs. Sheaffer made and signed the receipt?—what had she to do with the transaction?

A. Mrs. Leah Miller couldn't write and neither could Mr. Sheaffer and Mrs. Jennie Sheaffer done his writing and not only for him but Mrs. Miller.

Q. 15. Why was the receipt signed "Henry Sheaffer" if you remember?

A. I don't know unless I would go to work and explain it this way: Mrs. Miller had borrowed money from Mr. Sheaffer either to pay taxes or to spend—I don't know which, but think it was to pay taxes; at any rate Mrs. Miller told me to pay Mr. Sheaffer my rent, as she wanted it to go on what she had borrowed from him, and then she turned to Mrs

Sheaffer and said "Write Mrs. Champion a receipt that will show that she has paid her rent and that Mr. Sheaffer has received the money." She did so and that is the only explanation I can give.

Q. 16. Did you ever become acquainted with Mr. J. C. Zimmerman, a son-in-law of Mr. George W. Kissinger, who lived a short distance west of the village of Marysville?

A. Yes, sir.

Q. 17. When and where did you first become acquainted with Mr. Zimmerman?

A. At our own house; he had an invitation from Mr. Champion to come and take dinner one Sunday; it was shortly after we moved there; it was in March, I think.

Q. 18. When Mr. Zimmerman came to your house that Sunday, did he come alone; and if not, who was with him?

A. One of his children, a small boy, was with him.

Q. 19. In what house were you living at the time when Mr. Zimmerman came one Sunday to take dinner with you, as you have testified?

A. Mrs. Leah Miller's.

Q. 20. How many times did Mr. Zimmerman ever come to take dinner with you at your home?

A. Only once.

Q. 21. Do you remember any conversation that took place between Mr. Zimmerman and your husband or yourself on that Sunday when he dined with you, relating to the subject of obtaining water for household use?

A. Yes, sir.

Q. 22. Will you please state what you recollect of that conversation that Sunday?

A. The conversation turned during dinner upon the convenience of our having water so handy, and then Mr. Champion asked Mr. Zimmerman where he lived, or something of that kind, and he told where he lived, and said that the greatest difficulty they had was in carrying their water. He said that they had to carry it up a hill, but that they expected—I can't tell now whether he said they intended to get it, or whether they had it and the pipes had bursted, or it was out of order, or whether it was frozen, or how—but I know that the conversation turned upon a hydraulic ram for forcing the water up the hill.

Q. 23. Did you at the time understand what a hydraulic ram was, or ask any explanation about it?

A. I did not understand at the time they were talking about it, but afterwards asked Mr. Champion what it was.

Q. 24. When Mr. Zimmerman went away from your house that day, who, if anybody, went with him?

A. Mr. Champion left the house with him.

Q. 25. Were you ever at Mr. George W. Kissinger's residence, on the farm west of the village of Marysville; if so, how many times?

A. Yes, sir; I was there twice. Once at the house—twice on the farm.

Q. 26. Referring to the time when you were there at Mr. Kissinger's house, how happened you to go there at that time?

A. I went with Mr. Champion, to see about getting cherries.

Q. 27. Whom did you see there at Mr. Kissinger's house that day?

A. I only saw Mr. Kissinger and Mr. Zimmerman's wife and his two children.

Q. 28. In what year, and what time of the year was that, as near as you can state?

A. It was in the year of 1876, and in the time of early cherries; I don't know whether it was the latter part or about the middle of June.

Q. 29. Was it early cherries that you went there at that time to see about getting?

A. Yes, sir.

Q. 30. Did you arrange to get any early cherries?

A. No, sir, not early cherries; they had no more than they wanted themselves.

Q. 31. Did you arrange to get any kind of cherries?

A. We did—later cherries when they got ripe.

Q. 32. You have stated that you were again on Mr. Kissinger's farm; will you now state when you were there next, and for what?

A. We were there the time of late cherries—I think it was in July; and we picked them on the halves. This was in the summer of 1876.

Q. 33. Were these two occasions, to wit: The time when you went to see about getting early cherries, and the time when you went to pick the late cherries in the summer of 1876, the two occasions that you mentioned in your 25th answer as being the only times when you were over at Kissinger's place?

A. Yes.

Q. 34. When you went there to pick the late cherries that summer who went with you?

A. Mr. Champion and my three daughters.

Q. 35. Describe the course that you took in going to the cherry-trees that day.

A. We took the road leading from our house to Mr. Kissinger's farm west of Marysville, and we came to the large gate fronting the house—the house standing back from the road a hundred yards, I should say—we went down past the house by the road or drive that they used, until we came near the barn. We then went down through a pair of bars into a field a little to the right of the barn, and running across this field there was a fence; and the first tree that we picked stood close to this fence. When we had picked most of our share from that, we went farther up into the field and picked the remainder of what we got from a tree that stood there.

Q. 36. Did you on that occasion see anything around in the vicinity of the barn that attracted your attention? If so, what?

A. I saw nothing that I recollect of close by the barn, but a little way from there were some logs lying.

Q. 37. Was there anything peculiar about the logs that attracted your attention? If so, what?

A. I don't know what first attracted my attention to them, but I recollect noticing that there were holes bored through some of them lengthwise. I recollect asking Mr. Champion what they were for.

Q. 38. Do you remember what his reply was when you asked him that question?

A. Yes, sir; he told me he thought they were for using for this pipe for this water that Mr. Kissinger had spoken of there at our house—forcing the water to the house.

Q. 39. Which Mr. Kissinger had spoken at your house about forcing the water?

A. I see my mistake now. I didn't mean Mr. Kissinger; I meant Mr. Zimmerman.

Cross-examined by Mr. Storrow:

Cross-Q. 40. Whereabouts in the field were these logs that you have mentioned, according to your recollection?

A. They wasn't but a short distance from the barn—just a little way.

Cross-Q. 41. Lying right out in the field?

A. Yes, sir.

Cross Q. 42. Lying on the ground or piled up?

A. They were lying on the ground, as near as I recollect, but not piled up—more spread out.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 3d day of January, 1884.

FRED. M. OTT,
Examiner.

SARAH CHAMPION.

Mrs. ANNIE M. REYNOLDS, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

I reside two miles and a half from Shiremanstown, Cumberland county, Pa.; my husband's name is Samuel Wesley Reynolds; he is a farmer.

Q. 1. What was your maiden name?

A. Annie M. Nichols.

Q. 2. Are you a daughter of Mr. Samuel Nichols, who testified in behalf of the defendants in this case, (see defendants' printed record, p. 238,) and whose son, Edward Nichols, testified in behalf of complainants at Philadelphia last winter (see complainants' printed record, pp 852 to 883]?

A. Yes, sir.

Q. 3. Is Mr. Edward Nichols your only brother?

A. Yes, sir.

Q. 4. Mr. Edward Nichols testified in substance that he worked for Mr. David A. Hauck about two or three months in 1874, in the shop occupied by Daniel Drawbaugh, at Eberly's Mills, or Milltown; and that the time when he worked there was shortly before Mr. Hauck suspended active work, in June or July, 1874; do you remember the fact of your brother's working there for Mr. Hauck in the summer of 1874?

[*Objected to as leading.*]

A. Yes, sir.

Q. 5. Did you ever at any time hear your brother, Edward Nichols, say anything about any machines or inventions in Mr. Drawbaugh's shop?

[*Same objection.*]

A. Yes, sir.

Q. 6. What machines or inventions there did you hear him speak of?

A. The talking-machine.

Q. 7. When did you first hear your brother say anything about the talking-machine?

A. In 1874.

Q. 8. Was it while your brother was working for Mr. Hauck, in Mr. Drawbaugh's shop, or before, or after he worked there?

[*Objected to as leading.*]

A. It was while he was working there.

Q. 9. How many times, while your brother was working there for Mr. Hauck, in Mr. Drawbaugh's shop, did you hear him speak of the talking-machine?

A. Different times; I couldn't say how often.

Q. 10. Did he say whether he himself had seen the talking-machine or not?

[*Objected to as leading and inquiring for hearsay.*]

A. Yes, sir; he said that he had seen the talking-machine, but he didn't say what parts of it.

Q. 11. Did he say where he had seen it, and whose talking-machine it was?

[*Objected to as hearsay.*]

A. Yes, sir; he said it was Mr. Drawbaugh's. He said he had seen it in the mill somewhere, but he didn't say whereabouts.

Q. 12. In what mill?

A. In the Milltown mill.

Q. 13. In the grist-mill?

A. No, sir; in the other.

Q. 14. What other mill is there there besides the grist-mill?

A. I generally call the machine-shop the mill. I have been used to it on account of my father working in it.

Q. 15. What mill did your father work in?

A. Bailey's mill.

Q. 16. Where is that?

A. Down along the Susquehanna river. I couldn't tell just whereabouts, for I never was there.

Recess until 2, P. M.

Q. 17. You say that the building at Eberly's Mills, or Milltown,

which you in your eleventh answer called a mill, was a machine-shop; who carried on business in that machine-shop?

[*Objected to as not warranted by the preceding testimony.*]

A. Mr. Drawbaugh and Mr. Hauck.

Cross-examinstion waived by Mr. Howson.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 3d day of January, 1884.

FRED. M. OTT,
Examiner.

MRS. ANNIE M. REYNOLDS.

JOSIAH M. BRUNER, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

My age is forty-one; residence, Duncannon, Perry county, Pa.; occupation, farm and live-stock dealer.

Q. 1. Did you ever live at Marysville, Perry county, Pa.?

A. Yes, sir.

Q. 2. When did you begin to live in Marysville, and when did you move away from there?

A. I went there to live February 27, 1874; I moved away February 28, 1877.

Q. 3. Where did you move from when you moved to Marysville?

A. Duncannon.

Q. 4. And when you moved away from Marysville, where did you move to?

A. Duncannon.

Q. 5. While you were living in Marysville, did you keep house?

A. I did, with the exception of the first month.

Q. 6. When you left Marysville and moved back to Duncannon, did you sell out your household goods and effects, or take them back to Duncannon with you?

A. I took them back to Duncannon.

Q. 7. By what conveyance were they taken to Duncannon from Marysville?

A. By the Pennsylvania railroad, from Haley's station.

Q. 8. Haley's station is the station at the lower or south end of Marysville, is it not?

A. It was at that time, but now it is called Marysville station.

Q. 9. Have you resided in Duncannon ever since you moved back there from Marysville in February, 1877?

A. I have.

Q. 10. When you went to live in Marysville in February, 1874, what business did you first engage in, and how long did you continue that business?

A. I was engaged in the butchering business from the time I went there until May 13, 1876.

Q. 11. Have you any day-book or other account-book here containing any entries relating to your butchering business at Marysville?

A. I have.

Q. 12. Does that book contain entries relating to the first part or the last part of your butchering business at Marysville?

A. It commences July 5th, 1875, and ends May 13th, 1876.

Q. 13. From the fact that you state that your butchering business at Marysville ended May 13th, 1876, and that the entries in this book, which you have here, end on the same date, I judge this to have been the last account-book which you kept relating to that business; am I correct or not?

A. You are correct.

Q. 14. Will you please hand the book to the Examiner in order that he may copy upon the record the entry of the last day of your butchering business at Marysville.

A. Yes, sir; here it is.

[Witness produces book, in which appears the following entry:

"May 13th 1876	
A. Carl	$.87
Geo. Dick 2x12	.25
" 1 3–4x15	.26
Mrs. Fenn 2 3–4x12 1–2	.34
Shreiner 11 1–2x14	1.61
Mrs. Jones ste 16	.32
Mrs. Epley 7 1–4x14	1.02
A Dissinger 7 1–2x12 1–2	93
D Geib by cash 4.26."]	

Q. 15. When were those entries made in that book, and by whom?

A. They were made May 13, 1876. Part of them were made by

myself and part by Stiles L. Fessler, who was working for me at the time.

Q. 16. In whose possession has that book been from that time to this?

A. In my possession.

Q. 17. When you went out of the butchering business on May 13, 1876, what business did you next take up?

A. Buying live stock.

Q. 18. How soon after you went out of the butchering business did you enter upon the business of buying live stock?

A. At once.

Q. 19. How long did you follow that business at Marysville—I mean the business of buying live stock?

A. Until the fall of 1876.

Q. 20. Do you remember about what time in the fall you ceased the live-stock business?

A. I think about November the first.

Q. 21. From the time you ceased the live-stock business until February 28 following, when you moved away from Marysville, what business, if any, were you engaged in?

A. None in particular.

Q. 22. While you were engaged in the business of buying live stock in the summer and fall of 1876 at Marysville, what kind of live stock for the most part did you deal in?

A. Mostly in sheep.

Q. 23. Did you both buy and sell sheep?

A. I did.

Q. 24. What provision did you make for pasturing or keeping your sheep while you held them for sale?

A. What I had near Marysville I pastured with Mr. Kissinger.

Q. 25. Do you know that Mr. Kissinger's full name?

A. My impression is that it is George. I am not positive.

Q. 26. Where did he live at that time?

A. He lived near Marysville, on Mr. Draper's farm.

Q. 27. While you had your sheep out there at Mr. Kissinger's place, did you or not have any occasion to go out there to look after them or for any other purpose?

A. I did.

Q. 28. How frequently were you out there to Mr. Kissinger's place while your sheep were there?

A. I don't know the number of times, but quite frequently.

Q. 29. Were you in Mr. Kissinger's house at any time?

A. Not to my knowledge.

Q. 30. To what part of the place were you accustomed to go when you went out there on business relating to your sheep there?

A. I went past the house, to the fields by the barn and beyond the barn.

Q. 31. Do you remember whether or not there was an observatory on the house that Mr. Kissinger lived in on the Draper farm at that time?

A. There was.

Q. 32. Will you describe it?

A. It was, I think, about eight feet square; I think it had a railing about three feet high around it.

Q. 33. Just an open observatory without glass walls or roof?

[*Objected to as leading.*]

A. It was.

Q. 34. Do you remember where Mr. Kissinger got his water that he used at the house, and also for watering the stock at and around the barn?

A. There was a spring in the hollow below the house that I think supplied the house and stock both.

Q. 35. If, at any time when you were there during that summer or fall while you had your sheep at Mr. Kissinger's place, you had any talk with Mr. Kissinger in regard to his water supply, or anything connected with that subject, will you state what the conversation was, and where it took place, and what led to it.

[*Objected to as leading.*]

A. I had. One time I noted a hole dug in the hollow below the house; and when I went over to the barn Mr. Kissinger was there. I asked him what he was going to do with that hole he had dug there; he said he was going to put a ram in to force the water up to the house. I asked him why he didn't put it up near the spring; he said he had to put it down there in order to give it fall enough to force it to the house. He then showed me some sticks of timber that he intended to use for the pipes from the spring to the ram.

Q. 36. Have you any recollection of noticing at that time whether those sticks of timber were bored lengthwise or not?

[*Objected to as leading.*]

A. I had not; but I think there was one stick lying on trestles at the time.

Q. 37. Describe, as nearly as you can after the lapse of so long a time, the location of the hole which Mr. Kissinger told you had been made to put a ram in.

A. The hole was in the hollow—I think about opposite the house; I don't know if it was completed or only partly so.

Q. 38. What is your recollection as to the size and depth of the hole, if you noticed?

[*Objected to as inquiring for guess-work, and as incompetent in view of the last answer.*]

A. I have no recollection.

Q. 39. What is your recollection as to about the distance that that hole was from the spring?

[*Same objection.*]

A. It has been so long that I have very little idea of the distance, but think it must have been about 200 feet.

Q. 40. When was the last time that you were ever on that Draper farm?

A. Not since the fall of 1876.

Q. 41. About what time of year was it, as near as you can state, when you saw that hole in the ground, and had that conversation with Mr. Kissinger about it, that you have related in your testimony?

[*Objected to as asking for guess-work.*]

A. I am not positive as to the time; but I think it was sometime in August.

Q. 42. And in what year was it?

A. In 1876.

Cross-examined by Mr. Howson:

Cross-Q. 43. How far is Duncannon from Marysville?

A. Between seven and eight miles by railroad.

Cross-Q. 44. How long have you been in the stock-dealing business at Duncannon?

A. Off and on, since the spring of 1877.

Cross-Q. 45. To what distance from Duncannon have your buying and selling operations in that business extended?

A. I buy all over Perry county, and some in Dauphin county; I sell some at home and some in Philadelphia.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 3d day of January, 1884.

FRED. M. OTT,
Examiner.

J. M. BRUNER.

EMANUEL KELLER, *being produced, affirmed, and examined, saith:*

Examined by Mr. Hill:

My age is almost sixty-one; residence, Rye township, Perry county, up the Fishing Creek valley, about eight miles back from Marysville; I am a farmer.

Q. 1. Did you ever own an auger for boring log-pipes?

A. Yes, sir; I did.

Q. 2. Are you acquainted with George W. Kissinger, who used to live on the Thomas Draper farm, between your place and Marysville village, and only a short distance from the village?

A. Yes; I know him well.

Q. 3. Did he ever borrow that auger from you; and if so, how many times did he borrow it?

A. Yes; he borrowed the auger from me. Only once, though.

Q. 4. How long did he keep it?

A. About a year, to the best of my knowledge.

Q. 5. When that auger was taken to Mr. Kissinger's place, where was it taken from?

A. It was taken from Heisley's, down.

Q. 6. Can you give me Mr. Heisley's name?

A. The old man's name was Philip Heisley. He is not living now. The young man's name, who is the proprietor of the farm, is Pete Heisley.

Q. 7. Do you remember who took the auger down from Mr. Heisley's place to Mr. Kissinger's place?

A. To the best of my knowledge, I took it along down in the spring-wagon one time when I went to Marysville. I am pretty sure, too.

Q. 8. Who first came to you to see about borrowing the auger for Mr. Kissinger?

A. Kissinger himself came to me. I couldn't just say whether he came to my house or whether I met him on the road.

Q. 9. Where was the auger when Kissinger first spoke to you about borrowing it?

A. To the best of my knowledge it was at Heisley's. I am pretty sure, too, that it was.

Q. 10. How many times did Heisley have the auger?

A. He had it twice; and the first time he borrowed it of a man where I bought it from—Levi Dice. The second time he borrowed it from me.

Q. 11. You say that when Kissinger borrowed the auger it was at Heisley's. Was that the first time or the second time that Heisley borrowed it?

A. It was the second time. You see the first time they had it they brought it home. No I am a little mistaken there. When I went to Heisley's to fetch it, I found that they had lent it to Adams without asking me, and I didn't know it until I went to Heisley's to fetch it. I then went to Adams' and brought it home. The reason I wanted it was because one of our pipes had failed or bursted. Then the second time that Heisley's got it they got it from our house. I remember we had a trouble at first to find the bit that was used with it.

Cross-examination waived by Mr. Howson.

Examination taken, reduced to writing, and by the witness affirmed and subscribed to before me, this 3d day of January, 1884.

FRED. M. OTT,
Examiner.

E. KELLER.

DAVID KELLER, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

My age is twenty-five; residence, Keystone, Perry county, Pa.; I have been teaming—hauling lumber and ties and such stuff as that.

Q. 1. Are you a son of Mr. Emanuel Keller, who has just testified as a witness in this case?

A. Yes, sir.

Q. 2. How long did you live at home in your father's family?

A. Until I was twenty-one years of age.

Q. 3. Did your father ever own an auger for boring log pipes?

A. Yes, sir.

Q. 4. Did you know Mr. George W. Kissinger, who lived on the Draper farm just back of the village of Marysville?

A. Yes, sir; I did.

Q. 5. Did Mr. Kissinger ever borrow that auger from your father?

[*Objected to as leading.*]

A. Yes, sir.

Q. 6. How many times?

A. Only once that I know of.

Q. 7. How long did he keep it when he borrowed it that once?

A. It must have been a year or more.

Q. 8. Do you know where that auger was taken from when it was borrowed by Mr. Kissinger?

A. From Peter Heisley's.

Q. 9. Do you know who took it from Peter Heisley's to Kissinger's?

A. I couldn't tell who took it from Heisley's to Kissinger's.

Q. 10. Who came to your father to borrow the auger for Mr. Kissinger?

A. I couldn't tell whether Mr. Kissinger was there at father's place, or whether he asked him along the road going to Marysville; he goes to Marysville every week once.

Q. 11. How many times did Mr. Heisley ever have that auger, so far as you know?

A. Twice.

Q. 12. You say that the auger was taken from Mr. Heisley's to Kissinger's; was that the first or second time that Mr. Heisley had it?

A. The second time.

Cross-examined by Mr. Howson:

Cross-Q. 13. How far from your father are you now living?

A. I am living at home with my father.

Cross-Q. 14. Have you and he lately had any talk at all about this auger, and about it having been borrowed by Mr. Kissinger?

A. No, sir; not more than on Tuesday evening we spoke a little about it.

Cross-Q. 15. If I understand your testimony, you were not present

when the auger was borrowed by or for Mr. Kissinger, and were not present when the auger was taken from Mr. Heisley's to Mr. Kissinger's; is that correct?

A. I was at home at the time, and my father told me, when he came home, that he had loaned the auger to Mr. Kissinger.

Cross-Q. 16. Have you lately had any talk on the subject with any person other than your father? If so, with whom?

A. No, sir; not more than that we have had a little talk here about it.

Cross-Q. 17. Did you and your father come into town together to give your testimony in this case?

A. We came to town on one day; my father and my youngest brother came down to Marysville together in one buggy, and my oldest brother and I in another; from Marysville we all came down in the same train; we didn't speak about the auger, though, on the train.

[*Deposition objected to by Mr. Howson as incompetent, it appearing to be matter not of personal knowledge but of mere hearsay.*]

Re-direct by Mr. Hill:

Q. Q. 18. Is the place where your father lives called Keystone?

A. Yes, sir; the name of the post-office is Keystone; it is in Fishing creek valley, Rye township.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 3d day of January, 1884.

FRED. M. OTT,
Examiner.

DAVID A. KELLER.

Adjourned until January 4, 1884, at 10, A. M.

January 4, 1884, 10, A. M.

Examination resumed.

Present, Mr. Storrow and Mr. Howson for complainants, and Mr. Hill and Mr. Jacobs for respondents.

WILLIAM ADAMS, *being produced, affirmed, and examined, saith:*

Examined by Mr. Hill:

My age is forty-three; I am a farmer, and reside in Rye township, Perry county, Pa.

Q. 1. Are you acquainted with Mr. Peter J. Heisley, of Rye township?

A. Yes, sir.

Q. 2. Were you and Mr. Heisley ever connected together in any patent business?

A. Yes, sir; in a patent steam washer.

Q. 3. How did you become concerned together in that patent?

A. There was a certain man by the name of Preston came to Marysville claiming the right to sell territories under the patent, in the State of Pennsylvania; and Mr. Heisley and I bought from him the right to four counties under that patent, and held them jointly together.

Q. 4. Did you have a written assignment from him of the four counties?

A. Yes; I had this deed. [Witness exhibits a paper.]

Q. 5. When was this deed given by Mr. Preston to you and Mr. Heisley?

A. The 22d of July, 1874.

Q. 6. In whose possession has it been ever since?

A. In my possession.

Q. 7. If you have here the original deed which Mr. Preston gave you and Mr. Heisley on the 22d day of July, 1874, and which you say has been in your possession ever since, will you please produce it and allow the examiner to copy it upon the record?

A. Yes, sir; here it is.

[*Witness produces the paper heretofore exhibited and referred to, a copy of which is as follows:*

"Patent Deed No. *82656.*

Whereas, O. F. Stedman, of Westfield, Chatauque county, State of New York, did obtain Letters Patent of the United States for a certain improvement in washers, *bearing date Sept. 29th, A. D.* 1868. And whereas, S. B. Rockwell, *of Middlebury, Addison county, Vermont, is* assignee. And whereas, *P. J. Heisley and William Adams, of Marysville, Perry county, State of Pennsylvania, are* desirous of acquiring an interest therein:

Now this indenture witnesseth, that for the sum of *four hundred* dollars, and other valuable considerations to *me* in hand paid, the receipt of which is hereby acknowledged, *I* have assigned. sold, and set over, and do hereby assign, sell, and set over unto the said *P. J. Heisley and William Adams,* all the right, title and interest which *I* have in said invention, as secured to *me* by said Letters Patent, for, to, and in the *countys of Snyder, Northumberland, Montour, and Columbia, State of Pennsylvania,* and in no other place or places.

The same to be held for *theyer* own use and behoof, and for the use and behoof of *theyer* legal representatives, to the full end of the term for which said Letters Patent have been granted, as fully and entirely as the same would have been held and enjoyed by *me* had this assignment not been made.

In testimony whereof, *I* have hereunto set *my* hand and seal, the *22d day of July*, 1874.

Sealed and delivered in presence of
P. Heishley,
Mrs. W. Adams, Witness.

S. B. Rockwell, [L. S.]
Assignee. [L. S.]
John T. Preston, [L. S.]
Agent."

[*The deed is a printed form, with blank spaces for dates, parties, etc.; the portions above indicated by italics are written in ink, with the exception of the names of the witnesses, which are in pencil.*]

Q. 8. Did you ever bore any log pipes for use about your farm?

A. Yes, sir; I did.

Q. 9. When?

A. About the time that deed was given.

[*Witness indicates patent deed above copied upon the record.*]

Q. 10. Did anybody help you to bore those piper?

A. Yes, sir; Mr. P. J. Heisley.

Q. 11. From whom did you procure the auger that you used in boring those pipes?

A. From Mr. Heisley.

Q. 12. After you had bored your pipes, who took the auger away from your place?

A. Mr. Emanuel Keller, the owner of the auger.

Q. 13. How many times did you ever have that auger at your place?

A. Only once.

Cross-examined by Mr. Howson:

Cross-Q. 14. For what particular work did you use that auger?

A. To bore wooden pipes.

Cross-Q. 15. Wooden pipes for what?

A. To drain the water down into my barn-yard.

Cross-Q. 16. How many sections or lengths of wood-pipe did you bore with that auger?

A. I couldn't tell you that.

Cross-Q. 17. How long were you at the job?

A. I couldn't give you that positively. Mr. Heisley helped me two

days, and I bored some myself afterwards. About three days finished the job.

Cross-Q. 18. Were you then living were you now live?

A. Yes, sir.

Cross-Q. 19. How long have you lived on that property?

A. Since 1860.

Cross-Q. 20. How long was that auger in your possession?

A. To the best of my recollection, from July till in the fall.

Cross-Q. 21. What time of year was it that you bored this pipe?

A. Summer.

Cross-Q. 22. Early or late in the summer?

A. In July.

Cross-Q. 23. Have you renewed or taken away any of that wooden pipe since you first laid it for the drainage of your barn-yard?

A. Yes, sir; I have taken part of it away.

Cross-Q. 24. Did you replace the part taken away with new wood piping?

A. No, sir.

Cross-Q. 25. When was it that you took part of the piping away?

A. About two years ago.

Cross-Q. 26. Are you willing to say, as a matter of memory, that it wasn't less or more than two years ago?

[*Objected to as containing an assumption unwarranted by the testimony of the witness, who stated, not that it was two years ago, but about two years ago.*]

A. I couldn't say whether it was more or less; it may be a little more or less than two years, but it was about that time.

Cross-Q. 27. How long have you and Mr. Heisley been acquainted?

A. I have been acquainted with him ever since they moved into the valley.

Cross-Q. 28. When was that?

A. I couldn't give you the date.

Cross-Q. 29. Since the Heisleys moved into the valley, have you and they been near neighbors?

A. Yes, sir.

Cross-Q. 30. Have you and Mr. Heisley been accustomed to help each other on little jobs of work from time to time?

A. Yes, sir.

Cross-Q. 31. Was it before, or after the purchase of the patent right referred to in your testimony, that you bored this wooden pipe for your barn-yard?

A. Before and after.

Cross-Q. 32. Since laying that pipe, what, if any, repairs have you had occasion to make to it, and when?

A. About two years ago I changed the location of the watering-trough.

Cross-Q. 33. What time in the fall was it that the auger was taken away from your place?

A. I think it was in September.

Cross-Q. 34. Are you sure that it wasn't later than that?

A. I couldn't be positive about that.

Examination taken, reduced to writing, and by the witness affirmed and subscribed to before me, this 4th day of January, 1884.

FRED. M. OTT,
Examiner.

WM. ADAMS.

PETER J. HEISLEY, *being produced, affirmed, and examined, saith:*

Examined by Mr. Hill:

My age is thirty-one; I reside a little more than three and a half miles west of Marysville, in Rye township, Perry county, Pennsylvania; I am at the present time engaged in manufacturing brick.

Q. 1. How long have you resided in Rye township, Perry county?

A. Since the 19th of October, 1871.

Q. 2. Have you lived on the same place ever since that time?

A. Yes; that is, my father lived there and that has been my home; but I have been away, from time to time, often for six months or so—sometimes for a few weeks, sometimes for six months, and sometimes longer, I suppose.

Q. 3. What was your father's name?

A. Philip Heisley. He is not living; he died September 3, 1883.

Q. 4. Are you acquainted with 'Squire William Adams, who lives in Rye towsnhip?

A. Yes, sir.

Q. 5. Mr. Adams has testified this morning that he and you at one time became interested in a patent-right; is that correct?

A. Yes, sir.

Q. 6. What was that patent-right?

A. It was a steam wash-machine, called O. F. Stedman's patent, I think It is on the deed.

Q. 7. Mr. Adams, while on the witness-stand, exhibited a deed which he said was the deed to himself and you of that patent-right. The deed is still here, and I now hand it to you and ask you whether you are able or not able to identify this deed as the deed under which you acquired your said patent-right.

[*Objected to as leading, the witness' independent recollection as to the time not having been asked.*]

A. I am; this is the very deed.

Q. 8. When was that deed made?

[*At Mr. Howson's request, the examiner notes that the witness reads from the deed.*]

A. The 22d day of July, 1874.

Q. 9. Do you know that the deed was made at the time you bought the patent-right, or not?

[*Objected to as leading.*]

A. Yes, sir; it was made at the time we bought the right.

Q. 10. Were any bored logs ever used for any purpose on the farm on which you and your father lived in Rye township?

A. Yes, sir; there was.

Q. 11. Who bored those pipes?

A. I did.

Q. 12. When did you first bore log pipes for use on that farm?

A. In the spring of 1874.

Q. 13. Where did you get the auger that was used for boring the pipes in the spring of 1874?

A. From Mr. Levi Dice, of Marysville.

Q. 14. Where did you bore the pipes that were used on that farm in the spring of 1874?

A. On our own farm, on the barn floor.

Q. 15. After you had bored those pipes in the spring of 1874, what became of the auger that you used?

A. 'Squire Adams got the auger after we were through.

Q. 16. What did he want it for?

A. He wanted it to bore pipe to run the water into his barn-yard from back of the barn. I think he also ran the water into the spring-house; but I am not certain about that. I think he first laid them into the barn-yard, and then afterwards connected them with his spring-house.

Q. 17. Who bored 'Squire Adams' pipe?

A. I bored, I think, a day and a half or two days; I don't recollect exactly.

Q. 18. Did you afterwards get the same auger again, or not?

A. I did.

Q. 19. Whom did you get it from?

A. From Mr. Emanuel Keller.

Q. 20. How many times did you have it again after 'Squire Adams had it?

A. Only once.

Q. 21. When were 'Squire Adams' pipes bored?

A. They were bored near the time of the date of this patent deed, indicating deed heretofore copied on to the record by the examiner in deposition of Wm. Adams,]—a little earlier, I think.

Q. 22. When the auger was gotten from Mr. Emanuel Keller, who went and got it from Mr. Keller?

A. I got it myself.

Q. 23. Did you go to Mr. Keller's place to get it?

A. Yes, sir.

Q. 24. Whom did you see there when you went to get the auger?

A. Mrs. Keller and, I think, her two daughters.

Q. 25. Do you remember who gave you the auger there at Mr. Mr. Keller's place, and any circumstance connected with it?

A. Mrs. Keller gave me the auger, but we couldn't find the bit—we had quite a time until we found the bit. The bit was taken off the auger; and we finally found it, I think, in the corn-crib, wrapped up in a rag; I am not altogether certain as to where we did find it.

Q. 26. It appears that Mr. Adams bored his pipes in the summer of 1874, after you had that auger the first time. About when did you get the auger the second time—the time when you got it from Mr. Keller?

A. I think it was about the spring of 1875 that we had it the second time.

Q. 27. How early in the spring?

A. That I am not able to tell—whether it was in March or April, or what time.

Q. 28. Did you have it a short time or a long time the second time you had it?

A. We didn't have it very long.

Q. 29. How happened you to want the auger again so soon after you had it in the spring or early summer of 1874?

[*Objected to as assuming what the witness has not positively testified.*]

A. Our pipes—some of them—leaked, and the pen-stock leaked, and I expected to use the auger before Keller took the auger from Adams. In the meantime Keller got the auger, so I had to go to Keller for the auger. The second time I had the auger I only bored a few pieces—about twenty-five feet, or along there.

Q. 30. And what did you do with those pieces that you bored when you had the auger a second time?

A. I used some of them in the pipe, and put in a new pin-stock; and some are laying up there yet, I think, on the farm—a piece or so. I am pretty sure one piece is there—sixteen or eighteen feet, or whatever it was.

Q. 31. When were those repairs made on your pin-stock and water-pipes? I mean, when were the pieces put in?

A. In the spring of 1875.

Q. 32. How positive are you that it was not later than the spring of 1875?

[*Objected to as incompetent.*]

A. I know it was the following spring after we put them in in 1874.

Q. 33. Were you at home when the auger was taken away from your place after you had it the second time?

[*Objected to as leading.*]

A. No, sir; I don't think I was.

Q. 34. Then you don't know personally who took it away, or where it was taken to, do you?

A. No, sir; I don't. I heard them say that Mr. Keller took the auger; where to I don't know.

[*Last clause of answer objected to by Mr. Howson as not evidence.*]

Q. 35. Did you know Mr. George Kissinger, who used to live on the Draper farm, just back of the village of Marysville?

A. Yes, sir.

Q. 36. Did he ever come to your father's place while you were there?

A. Not that I remember of; he often passed there, but I don't remember of him just stopping at the place.

Q. 37. Did he ever say anything to you about that auger?

[*Objected to as leading.*]

A. No, sir; I don't think he did.

Recess until 2 P. M.

Cross-examined by Mr. Howson:

Cross-Q. 38. In what years, since 1870, have you been away from your home, in Rye township, for a month or more?

A. In 1871; and in the fall of 1872 I went north and worked up there until somewheres in the winter of 1873; I don't remember the exact time; I had been away in the winter of 1871–2; I didn't think of that; I was going to school that winter, and I was away from home all winter.

Cross-Q. 39. Since 1873 you have been living at home without being away for any considerable time. Is that it?

A. Yes, sir, I have, but not up to the present time; though after buying those patent rights I was away and stayed may be five or six weeks. I don't remember exactly how long I did stay, but I stayed some time.

Cross-Q. 40. How soon after buying those patent rights did you go away at that time?

A. I can't remember. The 'Squire he has the account of our expenses in a book what he has along with him. He can give you the exact date; but how soon it was I can't state.

Cross-Q. 41. I would like to have your own unassisted memory upon the subject, if you have any memory at all about it.

A. It was along from the latter part of July to some time in September—somewhere in between that time—as near as I can recollect.

Cross-Q. 42. Is your recollection any more definite as to the length of time you were away on that occasion? If yes, state the time as nearly as you can.

A. No; I couldn't recollect how long I really was away at the time.

Cross-Q. 43. Did you take more than one trip on that business—I mean the business concerning that patent right?

A. Yes, sir—I don't remember, though. The 'Squire and I went up to Sunbury together, and he came home after the first week. I don't remember whether I came home with him or not, but I afterwards went on up through Northumberland, and as far as Lycoming county.

Cross-Q. 44. And as I understand you, your recollection is quite indistinct as to whether you left home once or twice upon the patent right business?

A. I left home twice, I think. I am pretty sure that I left home twice.

Cross-Q. 45. Then, of these two trips, how long, according to your present recollection, was the first one?

A. I think the first trip was only a week's trip; I think I came home with Adams; and that then at the second trip I made the extended tour through Northumberland, Montour and Lycoming counties.

Cross-Q. 46. After returning from the first trip, how long did you stay home before starting upon the second?

A. That I don't remember.

Cross-Q. 47. Since that second trip and down to the present time have you been at home for any length of time, and if yes, how often and in what years?

A. I have been away from home, but I couldn't tell you how often; I can't just remember in what year I was away. I was working at blacksmithing and was away from home, but I can't remember exactly what years; I think it was in 1877; it was not far from home; it was in the neighborhood.

Cross-Q. 48. How long were you engaged upon this blacksmithing work?

A. I suppose it was about a year; although in that time I had been at home at intervals but not for any length of time.

Cross-Q. 49 Then, if I rightly understand you, there has been a period of about a year, during most of which you were away from home; and you think it was the year 1877, but are not certain; is that correct?

A. Yes, sir; that is correct.

Cross-Q. 50. What business or employment, other than the patent-right matter and the blacksmithing, has, at any time since 1874, taken you away from home for any considerable length of time; and if any, in what year or years, according to your present recollection?

A. I was away, if I mistake not, in the year 1878; I was employed by the Pennsylvania R. R. Co., somewheres in the spring and until the

fall; I was working with the bridge-builders at Marysville all summer on the bridge from Marysville to Rockville; I got the ague and was sick in the meantime. I would leave very frequently for a few days at a time and would get doctored up and go back again. Then I left some time in December, I think, and I went north. I stayed there for about three or four weeks, I suppose—perhaps more; then I came home again and stayed at home, I don't remember exactly how long, but think I stayed home a year or two; I was away sometimes but not a great deal —until the year 1881, I think it was, when I got on the Vanderbilt survey?

Cross-Q. 51. Are you at all certain in your recollection that it was in the year 1878 that you were working on the railroad bridge between Marysville and Rockville?

[*Objected to as immaterial and irrelevant to the examination-in-chief.*]

A. No, I am not positive of it.

Cross-Q. 52. Are you positive that it was in the year 1881 that you got on to the Vanderbilt survey?

[*Same objections.*]

A. I am pretty positive of that—the latter part of the year.

Cross-Q. 53. At time of year was it, according to your present recollection, that you borrowed the auger from Mr. Levi Dice?

A. As near as I can recollect, it was in the early spring.

Cross-Q. 54. How long, about, did the job take you for which you used the auger the first time you had it?

A. I don't remember exactly how long it was; I had it a few weeks, I suppose.

Cross-Q. 55. How long a time elapsed between the completion of the job for which you used it and the loaning of it to 'Squire Adams?

A. I don't remember how long it was, really. The auger had been laying there some time after our job was completed before the 'Squire got it: and that was prior to the 22d of July.

Cross-Q. 56. Did you inform Mr. Dice that you had loaned the auger to 'Squire Adams?

A. I don't remember anything at all about it—whether I informed him or whether he had asked him. I can't recollect.

Cross-Q. 57. When the auger was used at your place the second time, did you personally do the work that was done with it, or was that work done by some one else at your place?

A. I think that I done the work all, at our place; of course my brothers was helping me, but I was directing them.

Cross-Q. 58. How many of your brothers helped you the second time you used that auger; and what were their names?

A. I don't remember which one helped me; I don't remember whether Christian was at home and helped me at that time, but I am pretty sure Joe was; the other two, Philip and William, were at home, I think, but were too small to help me.

Cross-Q. 59. Is your recollection any clearer as to who, if any one, helped you the first time you used the auger?

A. No; it is not; there was somebody helped me, but I can't remember just who it was.

Cross-Q. 60. I understood you to say you were not at home when the auger was taken away after the second time you borrowed it; is that correct?

A. Yes, sir; I don't think I was at home after we borrowed the auger the second time—that is, when it was taken away; I was at home when we borrowed it, because I borrowed it myself; I may have been away only one day; and it may have been taken when I was away, and of course, I took no account of it; I heard them say that Keller took the auger.

Cross-Q. 61. In point of fact, you don't recollect whether the auger was taken away while you were living at home or temporarily away from home, do you?

A. No; I think I was living at home at the time.

Cross-Q. 62. When you borrowed the auger the second time, did you go to Mr. Dice for it first, or did you apply immediately to Mr. Emanuel Keller?

A. I went to Keller first.

Cross-Q. 63. Was Mr. Keller at home when you went there?

A. No, sir.

Cross-Q. 64. You have no positive recollection, have you, as to the length of time the auger remained at your place after you had borrowed it the second time?

A. No, I have not; it wasn't very long, though.

Re-direct by Mr. Hill:

Q. Q. 65. You say that after you and 'Squire Adams bought the patent-right, he and you had occasion to go away on business connected with it,

and he kept an account of the expenses. What kind of business was that that you and he were away on?

A. It was when we were away with the patent-right the first time; we were trying to sell county-rights. We also had a few boilers manufactured at the time—or one, I think—that was in the expense account.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 4th day of January, 1884.

FRED. M. OTT,
Examiner.

P. J. HEISLEY.

AMOS L. CLENDENNIN, *being produced, affirmed, and examined, saith:*

Examined by Mr. Hill:

My age is thirty; I reside at present in York; I am a railroad conductor.

Q. 1. Have you ever been married? If so, how many times?

A. Once.

Q. 2. On what day was your marriage ceremony performed?

A. On the 18th day of February, 1879.

Q. 3. If you have your marriage certificate here will you please produce it, in order that the date may be certified?

A. Here it is.

[*Witness produces a marriage certificate signed by Rev. J. W. Felix, certifying that A. L. Clendennin and Mollie J. Collier, both of Marysville, Perry county, Pennsylvania, were united by him in matrimony at Marysville, Pennsylvania, on the* 18*th day of February*, 1879.]

Q. 4. What was your wife's father's name?

A. Nathan Collier.

Q. 5. Is he living or dead?

A. He is dead.

Q. 6. When did he die?

A. He died in the fall of 1878.

Q. 7. Where did he live last previous to his death?

A. At Marysville, Pa.

Q. 8. Did he die there?

A. Yes, sir.

Q. 9. How long were you paying attention to Miss Collier before you married her?

A. About four years.

Q. 10. Was there any time during the four years in which your attentions to Miss Collier were interrupted?

A. Yes, sir.

Q. 11. When was that, and how long did that interruption continue?

A. It was in the spring of 1878, and continued till the fall of 1878.

Q. 12. Was it in consequence of some little misunderstanding between you or from some other cause?

A. From some little trouble between her and I.

Q. 13. While that interruption lasted did you pay any special attention to any other lady, or did you let the ladies alone?

A. I paid attention to Miss Kissinger between that time.

Q. 14. What is Miss Kissinger's name?

A. Susan Kissinger.

Q. 15. What is her father's name?

A. I don't know his first name.

Q. 16. Where did he live at the time when you paid attention to his daughter Susan?

A. About a mile and a quarter from Marysville, on the valley road, on the Draper farm.

Q. 17. Where was his daughter Susan living at the time when you paid attention to her?

A. At home with her parents.

Q. 18. It has appeared in evidence in this case that that Mr. Kissinger, when he lived on the Draper farm, near Marysville, had a hydraulic ram for the purpose of forcing the water from the spring to the house: and a question has arisen as to how long ago that ram was put in there: if you know of any fact that will throw any light on that subject will you please tell us all about it?

[*Objected to as leading.*]

A. During the time that I was going to see Miss Kissinger, one evening about nine o'clock Miss Kissinger requested me to go along to the spring for a fresh drink of water. After we went to the spring, and were in the act of leaving there, I heard some kind of a noise, and asked her what kind of a noise it was, or what the noise was. She told me it was a hydraulic ram, put in to force the water up to their house. That is all I know of it.

[*Answer objected to by Mr. Howson as not evidence.*]

Q. 19. Will you tell us as near as you can what kind of a noise it was—how it sounded?

A. It was a kind of a thumping noise.

Q. 20. Was it a loud or low sound?

A. It was a kind of a low noise. It was not very loud, but you could hear it very distinctly.

Q. 21. Can you make a noise to illustrate it—to give us some kind of an idea what kind of a noise it was?

[*Objected to as incompetent.*]

A. I would not know how to go about it.

Q. 22. Was it a continuous sound, or a sound that came regularly with intervals between?

[*Objected to as leading.*]

A. A sound that came at intervals.

Q. 23. What time of year was that when you were down there at the spring with Miss Kissinger, and heard that noise?

A. It was in the summer time.

Q. 24. What had you been doing that evening before you went down to the spring?

A. It was shortly after we came from a colored camp-meeting.

Q. 25. After who came from a colored camp-meeting?

A. Miss Kissinger and I.

Q. 26. How long after you and Miss Kissinger came from the colored camp-meeting was it that you and she went to the spring?

A. A very short time—probably ten minutes.

Q. 27. What kind of weather was it that evening?

A. It was a clear, warm evening.

Q. 28. At the time when your wife's father died, had you resumed paying attention to Miss Collier, or were your relations still broken off?

A. Still broken off.

Q. 29. How long after his death did you resume paying attention to Miss Collier?

A. About one month.

Q. 30. When did you last call upon Miss Susan Kissinger?

A. In the latter part of August, 1878.

Q. 31. When were you last at Mr. Kissinger's house, on the Draper farm?

A. When I made the last visit to Miss Kissinger.

Q. 32. Have you never been at Miss Kissinger's house since August, 1878?

A. I was not.

Q. 33. When you went down to the spring with Miss Kissinger, that evening, where did you go from?

A. From the house of Miss Kissinger—I mean the house where she lived with her father.

Q. 34. How long did you cease visiting Miss Kissinger before Mr. Collier, your wife's father, died?

A. From the latter part of August up to the time he died. I don't know the exact date when he did die.

Q. 35. How long was it after you ceased visiting Miss Kissinger before you again began to visit Miss Collier, who is now your wife?

A. I went with my wife about one month after her father died, and I think he died in September, 1878.

Q. 36. If I understand you, you are sure that he died some time in the fall of 1878.

A. Yes, sir; in the fall of 1878.

Q. 37. Will you tell us whether or not you have ever been down at the spring on the Draper farm since the summer of 1878?

A. I was not.

Q. 38. Where was that colored camp-meeting held that you went to with Miss Kissinger that night?

A. In Fenn's woods, near Souders' farm.

Cross-examined by Mr. Howson:

Cross-Q. 39. Were you residing at Marysville when you were married?

A. Yes, sir.

Cross-Q. 40. And had been living there how long?

A. I am not able to say exactly—not less than eight years.

Cross-Q. 41. When did you make the acquaintance of Miss Susan Kissinger?

A. I am unable to say.

Cross-Q. 42. Was it some time before the year 1878?

A. Yes, sir.

Cross-Q. 43. Were she and your present wife acquaintances?

A. Yes, sir.

Cross-Q. 44. When was it that you began to pay attention to Miss Kissinger—what month of what year?

A. The latter part of June, 1878.

Cross-Q. 45. When did you first visit the Kissinger house, either alone or in company with anyone else?

A. When I made my first visit with Miss Kissinger, in the latter part of June, 1878.

Cross-Q. 46. What work were you doing in July and August, 1878?

A. Running as conductor on the Baltimore division of the Northern Central Railway.

Cross-Q. 47. What part of the twenty-four hours did your duties, as conductor, occupy?

A. We have no regular hours; we run first in first out.

Cross-Q. 48. What train were you running at that time, and what was the length of your trip?

A. A freight train—ninety-one miles.

Cross-Q. 49. Were you ever off duty at Marysville during daylight?

A. Yes, sir; sometimes we get in in the morning and lay over during the day and night; at other times we come in during the night and go out the next day; when freight is heavy we haven't much lay over; when light we generally have from twelve to eighteen or twenty hours.

Cross-Q. 50. Do you recollect how it was during the period of time when you were paying attention to Miss Kissinger—whether freight was generally heavy or light?

A. No, sir; I have no recollection.

Cross-Q. 51. If during that time you generally ran with one particular engineer, who was he?

[*Objected to as immaterial and irrelevant to the examination-in-chief.*]

A. No regular engineer; we have now, but hadn't then.

Cross-Q. 52. During the period of your attentions to Miss Kissinger were you generally on or off duty on Sundays?

A. I was generally off duty up to to ten o'clock Sunday night unless there was a stock train.

Cross-Q. 53. About how frequently, according to your present recollection, did you visit Miss Kissinger at her father's house during the time you paid attention to her?

A. Between five and eight times.

Cross-Q. 54. Were you ever at the barn on the Kissinger farm, to your recollection?

A. No, sir.

Cross-Q. 55. How far from the house, according to your recollection, was the spring which you say you visited in company with Miss Kissinger?

A. About one hundred and twenty yards, I judge.

Cross-Q. 56. When you and she went there, did you follow any path or road, or did you take a direct path to the spring?

A. We followed a path—not direct.

Cross-Q. 57. If you recollect, did that path lead you anywhere near the barn?

A. No, sir.

Cross-Q. 58. Was the evening light enough to allow you to see to a distance from the spring?

A. Not a very big distance.

Cross-Q. 59. What month was this, and what time of month?

A. I am unable to say what time of month it was, but, to the best of my knowledge, I think it was in July, 1878.

Cross-Q. 60. Did you return from the spring to the house by the same way that you went to the spring?

A. No, sir.

Cross-Q. 61. Did you meet anyone besides Miss Kissinger at the farm-house that evening; and if yes, who?

A. I met Mr. Zimmerman after we had returned from the spring, probably an hour or so, in the sitting-room.

Cross-Q. 62. Were you ever on the path or road that you followed in going from the house to the spring and back, at any other time than that evening?

A. No, sir.

Cross-Q. 63. How far is the Draper farm from Fenn's woods, that you have mentioned in your testimony-in-chief?

A. About two miles—probably a little more—or two miles and a quarter.

Cross-Q. 64. Did you and Miss Kissinger walk there and back or go by some other conveyance?

A. We walked.

Cross-Q. 65. What time of the day did you go there—to the camp-meeting?

A. About six o'clock in the evening.

Cross-Q. 66. What day of the week was it?

A. I am unable to say.

Cross-Q. 67. Were all your visits to Miss Kissinger, while you were paying attention to her, evening visits; or were some of your visits in the daytime?

A. Evenings.

Cross-Q. 68. Were you in the habit of going there as early as six o'clock in the evening?

A. No, sir.

Cross-Q. 69. You have told us the path you followed in going to the springs didn't go near the barn; how far from the barn did the path lead, at the nearest point, if you can tell us?

A. The path led to the left, leaving the house, till about two-third way to the spring; and then it turned to the right and went straight to the spring; the spring was about twenty or twenty-five yards from the barn.

Cross-Q. 70. When and by whom were you first asked, lately, what, if anything, you knew about the ram on the Draper farm?

A. Squire Fenn of Marysville, about three months—as near as I can tell tell you—ago; it may be or it may be less, that is as near as I can tell you.

Cross-Q. 71. Where did he see you on the subject?

A. In Marysville, at the St. Cloud hotel.

Cross-Q. 72. What were you doing there that time?

A. I had just arrived with local freight and was waiting for time to leave to come south.

Cross-Q. 73. If I understand your testimony, it was while you and Miss Kissinger were at the spring that the noise that excited your curiosity first came to your notice; am I correct?

A. Yes, sir.

Examination taken, reduced to writing, and by the witness affirmed and subscribed to before me, this 4th day of January, 1884.

FRED. M. OTT,
Examiner.

AMOS L. CLENDENNIN.

Recess until 7.30, P. M.

JOHN PEFFLEY, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

My age is twenty-nine. I reside at Marysville, Perry county, Pennsylvania. I am a shoemaker.

Q. 1. When did you first reside at Marysville?

A. I can't just tell when I first came there, but I was initiated in the American Mechanics' lodge at Marysville in 1874. I was residing there then, and had been for some time before that.

Q. 2. Have you resided there ever since the time when you were initiated into the American Mechanics' lodge in 1874?

A. I resided there from that time until about the last of June or first of July, 1876, when I moved away. I moved back again to Marysville in October, 1883. From the time when I moved away in June or July, 1876, until I moved back in October, 1883, I lived elsewhere all the time.

Q. 3. When you moved away from Marysville in the latter part of June or first of July, 1876, where did you move to?

A. Athens, Michigan.

Q. 4. The American Mechanics is a secret society having numerous lodges, is it not?

A. Yes, sir; a secret society like the Free Masons.

Q. 5. Did that secret society make any excursion or have any meeting at the Centennial Exhibition in Philadelphia in 1876?

A. Yes, sir; there was a parade of lodges from all parts of the country at that time at Philadelphia. I don't know whether the Marysville lodge was down or not, as I was not living at Marysville at that time.

Q. 6. On what day, if you remember, was it that the lodges of American Mechanics met at Philadelphia during the Centennial Exhibition there?

A. The 8th day of July, 1876.

Q. 7. Where were you at the time of that gathering of the American Mechanics at Philadelphia, in July, 1876?

A. I couldn't tell just where I was at that time. I suppose I was on my way going out West. I know I had left Marysville at that time.

Q. 8. What business were you engaged in at Marysville prior to the time when you moved out West in the latter part of June, or early part of July, 1876?

A. Shoemaking I was working for Harmon Eppler at the time I left Marysville; but before I worked for him I had a shoe-shop of my own.

Q. 9. What did you do with your shoe-shop?

A. I sold out to Harmon Eppler, and after I sold out to him I went ot work for him and worked until I moved away.

Q. 10. Have you any book entry here that fixes the time that you

sold out that shoe-shop to Harmon Eppler? If so, will you please point it out to the examiner, in order that he may copy it upon the record?

A. Yes, sir.

[*Witness produces account book containing the following entry:*

"Harmon Eppler 1876
Deter to John Peffley
For stock & finding
Apr 17 22,65
paid 22 65

Work
April 17 . . . . . 2 95
Apr 18 . . . . . 5 80"]

Q. 11. When was that entry written in the book which you have produced here, and who wrote it—I mean the entry of the sale to Harmon Eppler?

A. It was wrote, to the best of my knowledge, at the time he bought it; I wrote it myself.

Q. 12. In whose possession has that book been ever since that time?

A. My own possession.

Q. 13. When you were living in Marysville before you moved away in June or July, 1876, were you acquainted with anybody there by the name of Kissinger?

A. Yes, sir.

Q. 14. With how many persons there by that name, and what were their Christian names?

A. George Kissinger, John, and Cyrus, and another one whose name, I think, was Frank Kissinger. George Kissinger was the father of the others that I have named.

Q. 15. Were you a married man at the time that you lived at Marysville before you moved away in 1876?

A. No, sir.

Q. 16. When were you married?

A. In 1878; the 28th day of September.

Q. 17. If you have your marriage certificate here, will you please produce it and hand it to the examiner in order that he may copy it upon the record?

A. Yes, sir; here it is.

[*Witness produces the marriage certificate, a copy of which, made by the examiner, is as follows*:

"This certifies that John H. Peffley and Tamar E. Walton, were by me

united in marriage according to the law of God and of the State of Pennsylvania, at Lincoln University, Chester Co., Pa., on the 28th day of September, 1878, in the presence of Henry Strawbridge and I. B. Randall.

Signed, ISAAC N. RANDALL."]

Q. 18. Who was the Isaac N. Randall whose name is signed to this original certificate of yours?

A. He was the minister who married me.

Q. 19. You stated that while you lived at Marysville, and before you moved away from there, about the 1st of July, 1876, you were acquainted with George Kissinger and with his sons Cyrus, and John, and Frank; where did that Kissinger family live at that time?

A. Up on the Draper farm, right up on the hill back of Marysville.

Q. 20. How well were you acquainted with the Kissinger boys at that time?

A. We used to be together often, and I used to go up there to get peaches.

Q. 21. When you would be up there at the home of the Kissinger's at what part of the farm were you?

A. The peach orchard, and the house, and the barn, and down at the spring, and around there.

Q. 22. How frequently were you around on that Kissinger place before you moved away from Marysville in June or July, 1876?

A. I couldn't tell just how often I was up there—frequently with the boys and around.

Q. 23. It has appeared in evidence in this case that at one time Mr. Kissinger put in a hydraulic ram on the Draper farm to force the water up from the spring to the house, and it has become important to find out when that was done, and when work was done there on that farm relating to that ram; if you know anything that will give us light on this subject, will you please state it?

[*Objected to as a leading and improper mode of inquiry.*]

A. I seen pipes laying there, and to the best of my knowledge the trenches were dug, or they were digging at them—had ground thrown up.

Q. 24. When was that?

A. It was before I left Marysville, in the summer of 1876.

Q. 25. Do you know how long it was before you left Marysville, in the summer of 1876, that you saw those pipes lying there and that ground thrown up?

A. No, sir; it was before I left, though.

Q. 26. Describe, as nearly as you can, where the ground was dug up, and where you saw the pipes before you left Marysville in 1876?

[*Objected to as assuming what witness has not positively testified.*]

A. Between the house and the spring the ground was dug up, and the pipes were lying round at the barn and at the ditch.

Q. 27. Did the ditch run in a straight line from the house to the spring, or how?

A. No, sir; it went from the house straight down to the hollow, and then over to the spring. It made a bend.

Q. 28. Where did it make a bend?

A. In the hollow down at the foot of the hill from the house.

Q. 29. What kind of pipes did you see there at that time?

A. Wooden pipes.

Q. 30. You say that you saw some of the pipes lying at the ditch; what part of the ditch—the part between the bend and the spring, or the part between the bend and the house?

A. They were lying along the ditch. I can't just remember where, but they were laying between the spring and the house.

Q. 32. Did you understand what that ditch and those pipes were for when you saw them there?

[*Objected to as incompetent.*]

A. Yes, sir.

Q. 33. For what?

[*Same objection.*]

A. For a ram.

Q. 34. How did you know that they were for the ram?

A. I heard people talk about it.

[*Objected to as not evidence.*]

Q. 35. When?

A. I couldn't tell when, but it was at that time when they were working at it before I went West.

Q. 36. When you went West in the summer of 1876, how long did you stay there before you returned to Pennsylvania again?

A. Till 1878, somewheres along towards the spring—about February or March, as near as I can fix the time.

Q. 37. When you returned to Pennsylvania in the spring of 1878, what place in Pennsylvania did you come to, and how long did you stay there?

A. To Rockville, Dauphin county, and stayed there maybe a month, or along there. I worked for my brother there at shoemaking.

Q. 38. Rockville is on the opposite side of the Susquehanna river river from Marysville, and a little below it, is it not?

A. Yes, sir.

Q. 39. While you were at Rockville working for your brother in the spring of 1878, did you go across the river to Marysville? If so, how many times?

A. Yes, sir; about two or three times maybe.

Q. 40. In any of those times did you, or did you not, visit Mr. Kissinger's place on the Draper farm?

A. No, sir.

Q. 41. When was the last time that you were ever at the Draper farm before you moved back to Marysville in October, 1883?

A. Before the time that I went out West in June or July, 1876. I have never been on that farm since, until the fall of 1883.

Q. 42. How happened you to go up there in the fall of 1883?

A. Mr. Fenn and I went up. I went up to show him where I saw the ditch and pipes in 1876.

Q. 43. When you and Mr. Fenn went up there in the fall of 1883, did you see an old hydraulic ram there in a hole in the ground?

A. Yes, sir.

Q. 44. How far was that hole from the spot where you saw the bend in the ditch, in 1876?

[*Objected to as incompetent, inquiring for guess-work.*]

A. The hole was about at where I saw the bend in 1876.

Adjourned until January 5, 1884, at 10 A. M.

January 5, 1884.

Examination resumed.

Present, same counsel.

Examination of John Peffley, by Mr. Hill, continued:

Q. 45. When you were in Michigan, in 1876, after you moved away from Marysville, did you keep any account book or memorandum relating to the work that you were doing, or places where you were?

A. Yes, sir.

Q. 46. Have you got it here?

A. Yes, sir.

Q. 47. Will you please produce it, and point out to the examiner the different entries which it contains relating to to your work in Michigan, in 1876?

A. Yes, sir; here it is.

[*Witness produces the same book that contained the entry of sale to Harmon Eppler, heretofore referred to, and points out the following entries therein*:

"Michigan
July Mr John Giltner
21 Commence to work"

On the opposite page of the book is the following entry:

"Received
July From J Giltner

22	tobacco	30
	tobacco	20
	shirts	1.77
	tobacco	20
Aug 27	cash	1.00
27	"	10.00
Sep	Received tobacco	30
"	rec	4.75
	rec	1.00
	"	25
		19.77
		30.00
		.77"]

Q. 48. Who is John Giltner, and where does he live, and how came his name to be in this book?

A. He lives near Athens post-office, in the State of Michigan; he is a farmer; I worked for him on the farm.

Q. 49. Who was the first man in Michigan that you worked for in 1876?

A. John Giltner.

Q. 50. This entry in the book, dated "Michigan, July 21st," and containing the words "Mr. John Giltner—commence to work"—when was that written in the book, and by whom?

A. The time I commenced to work; I wrote it myself.

Q. 51. The entry in the book does not give the year but simply "July 21;" in what year was it that you commenced working for Mr. John Giltner, July 21?

A. In 1876—the year of the Centennial.

Q. 52. How long did you work for John Giltner from the time when you commenced, July 21, 1876?

A. About two months.

Q. 53. Where did you go then?

A. To Mendon, Michigan.

Q. 54. Did you work for anybody at Mendon, Michigan? If so, for whom first?

A. Yes, sir; with John Woolford.

Q. 55. If your book contains any entries relating to your work for John Woolford, will you please point them out to the examiner in order that he may copy them upon the record?

A. Yes, sir; here it is.

[*Witness points out the following entry:*

"Michigan
Mendon Sep 25 1876
Commenced Boarding
with J Woolford on the 25
of Sep. John Peffley
Boarding one
week due 2nd Oct 3,00
Oct 9 board one week 3,50
Oct 16 board one week 3,50
Oct 23, board one week . . . . . 3,50"

On the opposite page is a series of entries commencing "Mich Sep 23 1876; received from J Woolfert, "Sep 25, received picture 75 cents"; then follow on the same page various items running through October, November, and a portion of December; the last two items on the page being as follows:

"Dec 11, rec by cash 2 40
23 by cash . . . . . 1,00"

The page next following that on which the entry "Michigan, Mendon, Sep. 25, 1876, commenced boarding," etc., occurs as above copied, is occupied by some pencil figuring. The next following page contains the impression of a rubber stamp in red ink in the design of an elliptical line with the following words included within such line, to wit:

"Sam Ensign
Mfr and dealer in
BOOTS & SHOES
All work warranted,
COLON, MICH."

Said words are all stamped or printed in red ink; then follows a blank page, next after which commences an account with the following words:

"Mendon, Mich Sep 25th 1876,
John Woolferd deter
to John Peffley for Work."

The account consists of items of making and repairing boots, shoes, and slippers, commencing September 26 and running on through September, October, November, December, January, and part of February, said account occupying three pages, and the last three items of said account being as follows:

"Feb 3 made P boots 3 50
Feb 1 made P boots 3 50
1 17 fit P boots . . . . . 1.00"]

[*The foregoing certificate objected to by Mr. Howson as incompetent.*]

Q. 56. On one page of the book which you have produced and exhibited to the Examiner here, I find an account dated "Colon, Mich, March 5, 1877," and running through from March 5 apparently to March 31. What does that account refer to?

A. I worked for Dennis Murphy there at his saloon for a while.

Q. 57. A few pages after that I find another red-letter impression of Mr. Sam Ensign's stamp, and right under it the words "Colon Mich Apr 11, '77, worked for Sam Ensign," with three entries of April 10, 12, and 18, of making and repairing boots and shoes. What does that entry refer to?

A. I worked for him a little while—about a week—after I left the saloon.

Q. 58. A few pages after that I find an account with "Theo. R. Souder," running from May 2 to May 23, for making boots. What does that account refer to?

[*Objected to as incompetent.*]

A. I worked for him at shoemaking.

Q. 59. Where?

A. Moore Park, Michigan.

Q. 60. What year?

A. I think that was in 1877.

Q. 61. Then follows an account with Ara Moffatt, running from June 1 to August 21. What does that refer to?

A. I worked for him at Vicksburg, Michigan.

Q. 62. The credit side of the account I see is dated "Vicksburg June 2 '77." Was that the year when you worked for Mr. Moffatt or not?

[*Objected to as leading.*]

A. I think so.

Q. 63. Then follows an account dated "Mendon, Mich." running through a portion of September and October, 1877; whom did you work for, and where, at that time?

A. G. P. Doan, at Mendon, Michigan.

Q. 64. Who was the last man that you worked for in Michigan, and where?

A. S. H. Oman, at Sturgis, Michigan.

Q. 65. Please look at the book and give me the date of the last entry in it relating to your work for Mr. Oman.

A. "December, 1877.

29 by cash 15
31 by cash 1.00"

Q. 66. How soon after you quit working for Mr. Oman did you return East?

A. I think, shortly afterwards; less than a week, anyhow.

Q. 67. Where did you first become acquainted with your wife?

A. At Oxford, Chester county, Pa.

Q. 68. How long had you known her before you married her?

A. I couldn't tell just right; the time that the Oxford fair was, in the spring of 1878 was the first that I seen her; it was a spring fair; I was working then for Charles E. Haley at North-East, Cecil county, Maryland.

Q. 69. How long had you been working for Mr. Haley before you first saw your wife at the Oxford fair?

A. I couldn't tell the date, but not so very long; I was working by the week then, for my board, and I didn't keep no account of it.

Q. 70. For whom did you work first, after you left your brother at Rockville?

A. Charles E. Haley.

Cross-examination by Mr. Howson:

Cross-Q. 71. When was it that you began to work and live at Rockville after your return from Michigan?

A. It was in 1878, along in the spring. I couldn't tell what date, but after New Year some time.

Cross-Q. 72. And you then stayed there until what time?

A. I couldn't just tell when I left. I left that spring shortly after that. I wasn't working long at Rockville.

Cross-Q. 73. And you then went where?

A. To North-East.

Cross-Q. 74. Did you subsequently go back to Rockville; and, if yes, when?

A. Not after I left to go to North-East—I didn't go back—till the fall of 1883, except that I was at Coxestown, this side of Rockville, at the time my brother was killed. I went along up from Harrisburg with the funeral. That was in June, 1882.

Cross-Q. 75. Whom are you working for now?

A. S. G. Eppler, at Marysville.

Cross-Q. 76. And have been since October last?

A. Since October 5th, 1883.

Cross-Q. 77. When was it that you and Mr. Fenn were up at the Draper farm?

A. I suppose it was two or three weeks after I came there.

Cross-Q. 78. What Mr. Fenn is that; and who, if any one else, was with you?

A. It is Squire William Fenn, of Marysville. There was nobody but him and I went up.

Cross-Q. 79. You and he had had some talk about the ram before that, I suppose?

A. Yes, sir.

Cross-Q. 80. More than once?

A. He was down right after I came there, and asked me whether I knowed anything about it.

Cross-Q. 81. You have heard a good deal of talk about that ram, and the time it was put in, since your return to Marysville in October, haven't you?

A. Yes, sir.

Cross-Q. 82. What was your errand to the Draper farm the time you were up there and think you saw wooden pipe lying around?

A. I was acquainted with the boys, and we were together often.

Cross-Q. 83. Which of the boys was with you that day?

A. I couldn't tell whether it was any of the boys—probably it was the old man—I couldn't tell which one was with me, or whether anybody was with me, when I saw this.

Cross-Q. 84. What time of year was it?

A. I couldn't tell what time of the year; I know it was before I went out West—before I left in 1876.

Cross-Q. 85. How long before you left?

A. I couldn't tell what date; they had a picnic up there in the woods—right back of Marysville—before I left, but whether I saw it at that time or not I couldn't say.

Cross-Q. 86. Does Mr. Eppler, for whom you are working now, keep a shoe-store only, or a general store?

A. He keeps shoes, and confectionery, and manufactures boots and shoes, and also keeps tobacco and cigars.

Cross-Q. 87. Are people in and about Marysville in the habit of congregating there in the evening and talking?

A. Yes, sir.

Cross-Q. 88. How long were you at the Draper farm that time when you say you saw the wooden pipe lying around; and what time of day was it?

A. I couldn't tell how long I staid there, nor what date, nor anything; I couldn't say, only I knowed what they were going to put in and what they were digging for, and didn't pay no attention to dates, nor nothing of that kind. I could have had the dates along if I had knowed what I know now.

[*All after "I couldn't say" objected to as irresponsive and volunteered.*]

Cross-Q. 89. How long were you living at North-East, Maryland?

A. I think I moved my family away there in the spring of 1879.

Cross-Q. 90. Where did you move to in the spring of 1879?

A. To Colemanville, Lancaster county, Pa.

Cross-Q. 91. Where did you go to from there, and when?

A. I went to Laurel Forge, or Pine Grove, Cumberland county, Pa.

[*Witness takes up one of his account books to refer to it, and Mr. Howson states to him that he wants his memory without reference to any book.*]

A. It was in the fall of 1879 or 1880 to the best of my knowledge, unless I look at my book.

Cross-Q. 92. Do you mean that without consulting your book you are uncertain whether it was in the fall of 1879 or in the fall of 1880?

A. Yes, sir.

Cross-Q. 93. Where did you move to from Laurel Forge, or Pine Grove, and when?

A. I moved to Lancaster city in the following spring.

Cross-Q. 94. And where did you go to from there, and when?

A. To Chester county, to Glenmore post-office.

Cross-Q. 95. When was that?

A. I can't remember the date. That was towards fall, then, of that summer.

Cross-Q. 96 What summer?

A. The summer that I moved to Lancaster.

Cross-Q. 97. What summer was that?

A. To the best of my knowledge, it was in 1881.

Cross-Q. 98. Where did you go to from Glenmore?

A. To Douglassville, Berks county, Penna.

Cross-Q. 99. How long did you stay there, and where did you go to from there?

A. I stayed there till I went to Marysville, October 5, 1883.

Cross-Q. 100. What wages are you earning at your present employment?

A. I am working by the piece; I make from two and a half to over six dollars a day, according to what work I have.

Re-direct by Mr. Hill:

Q. Q. 101. Do you remember what kind of weather it was—whether it was warm or cold, and whether the trees were leaved out or not at the time when you saw the ditch dug and the wooden pipes lying there on the Draper farm?

[*Objected to as leading and as incompetent; the witness having already testified that he hasn't the slightest recollection as to the time of year.*

Respondents' counsel replies that the witness may be able to answer this question, even if he hasn't the slightest recollection as to the time of year.]

A. I had been there often, but I couldn't swear to the date; I have been there when it was cold and when it was spring-like; I think it was in the spring when I seen it, but I wouldn't be certain. I think it was at the time of that picnic that was right close to it; I think that is the last time that I had been up there.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 5th day of January, 1884.

FRED. M. OTT,
Examiner.

JOHN PEFFLEY.

Recess until 1.30, P. M.

JOHN H. HARPER, *being produced, affirmed, and examined, saith:*

Examined by Mr. Jacobs:

My age is sixty-four; I reside in the borough of Duncannon, Perry county, Pa.; I am a carpenter by trade, but have been a farmer for about twenty years.

Q. 1. Since what time have you been living in and about Duncannon?

A. I have been living there now seven years, in and around Duncannon, within a mile and a half, ever since 1878; about the 1st of March or last of February, 1878, I went there.

Q. 2. Where did you live immediately before that time?

A. In the town of Marysville, Perry county, Pa.

Q. 3. How long had you been living in the town of Marysville before you moved to Duncannon?

A. Three years.

Q. 4. During those three years did you live all the time in one house in Marysville or in different houses at different times?

A. Two years I lived on Mr. Fenn's farm; that is in the borough of Marysville; the third year I lived about six months in the company's house up at the upper station, and the balance down in the town.

Q. 5. When did you go to live at Mr. Fenn's farm?

A. In the spring of 1875.

Q. 6. And when did you move away from it?

A. I was there from the spring of 1875 till the spring of 1877.

Q. 7. You farmed the place during those two years, did you not?

A. Yes, sir.

Q. 8. For whom?

A. In 1875 I farmed for the old gentleman, Theophilus, senior, and the second year for his son, Theophilus.

Q. 9. Were you acquainted with George W. Kissinger, who, during the time you lived upon Fenn's farm, lived upon a farm in the borough of Marysville owned by Thomas Draper ,of Dover, Delaware?

A. Yes, sir; we joined farms.

Q. 10. Do you remember any particular visit which you had occasion to make to the Draper farm whilst you lived upon the Fenn farm? If so, please state when it was, and what was the occasion of the visit.

A. Yes, sir; it was in the summer of 1875, about the latter part of August or September. I took up a breed-sow. She was about in season; and I wanted her covered by his boar.

Q. 11. For whom were you farming at the time you made this visit?

A. For the old gentleman.

Q. 12. Did you ever at any other time take that or any other breed-sow to the Draper farm?

A. No, sir; I had no other one but that one; and I never took that one at any other time.

Q. 13. After you left the Fenn farm in the spring of 1877, what became of that breed-sow?

A. I left her on the place.

Q. 14. After that time, and up to the time you left Marysville to move to Duncannon, did you keep any hogs either for yourself or any one else?

A. No, sir.

Q. 15. Will you state what reason you have for fixing the time you drove that breed-sow to the Draper farm as in the year you farmed the Fenn farm for old Mr. Fenn?

A. When I came there, there was a truck patch right where I turned the sow into the field—of cabbage and tobacco—and, according to that, I judge from the size of the cabbage and tobacco the time of year; it was the first place I took the sow after I bought her—the first litter of pigs she got—and that is why I know it was the first year. I bought her that first year, whilst I farmed for old Mr. Fenn. I bought her about three miles from Harrisburg.

Q. 16. When you got to the Draper farm did you meet and talk with any one; if so, who?

A. Yes, sir; with Mr. George Kissinger, the old gentleman; he saw me coming and opened the gate for me, because I had spoke to him before I took her there.

Q. 17. How long did you remain there?

A. It might have been two hours or two and a half; somewhere along there.

Q. 18. Did Mr. Kissinger remain with you all of that time?

A. Pretty near.

Q. 19. Whilst you were together were you and he standing or walking or sitting?

A. We were sitting part of the time and walking part of the time; we walked through the truck patch awhile at first and looked at his truck—cabbage and tobacco—we got right out at the fence and sat down on the pipes—these pipes that he was boring there. He had them lying upon trestles; some of them were bored and some were not bored.

Q. 20. Can you tell me anything about the dimensions of them?

A. I don't know that I could tell you the length exactly; they may have been about from twelve to fourteen, sixteen, or eighteen feet in length. They were of different lengths—I know that; they may have been five or six inches in diameter; I couldn't tell exactly; they were of different grades; I didn't look particularly at that.

Q. 21. Do you remember of what kind of wood they were?

A. Chestnut—what I sat on.

Q. 22. Did he tell you what those pipes were intended for?

A. Yes, sir; he intended to run the water to the house from the spring by putting a ram in down at the corner.

Q. 23. How long did you remain sitting on the pipes talking to Mr. Kissinger?

A. We might have been sitting there an hour and a half—fully, I guess.

Q. 24. What was the reason of your remaining so long at the Draper farm?

A. I wanted to see if there was any use in my coming up with my hog there—whether she would be served or not—it is generally of a little importance to know.

Q. 25. Where was she in the meantime?

A. Right inside the fence in the field; and Mr. Kissinger and I were watching her.

Q. 25. Whereabouts were the pipes which you have spoken of?

A. Right beside the gate where I turned the pig into the field. The barn stands in the field that I turned her in. It was the field back of the barn.

Q. 27. How far from the barn did the pipes lie?

A. About fifty or sixty feet. The gate was in between, and several panels of fence. I couldn't tell exactly.

Q. 28. After you moved away from the Fenn farm in the spring of 1877, were you at any time again at the Draper farm? If so, when; and who, if anybody, was with you?

A. Me and young Mr. Theo. Fenn were up on a Sunday getting some cider and apples. That was in the fall of 1877.

Q. 29. How did you and Mr. Fenn go there?

A. We came up by the cemetery—right up towards the barn—past the spring, and into the orchard. We got our cider and apples, and left again. There was nobody at home; or we did not see anybody.

Q. 30. Whereabouts,did you get the apples and cider?

A. Up in the garden; the press stood there.

Q. 31. Did you go to the house?

A. No, sir.

Q. 32. Why not?

A. We weren't going there; there was too cross a dog there.

Q. 33. Did you expect to meet Mr. Kissinger there at that time?

[*Objected to as immaterial and incompetent.*]

A. Yes, sir; he had invited us frequently to come up; and we expected, of course, to find him, but there was no set time for it.

Q. 34. You were at that time living down in the village or built-up portion of Marysville, were you not?

[*Objected to as leading.*]

A. Yes, sir; in one of Dr. Traver's houses.

Q. 35. Was that the only visit you paid to the Draper farm between the time when you left the Fenn farm in the spring of 1877, and the time when you moved to Duncannon in February or March, 1878?

[*Same objection.*]

A. Yes, sir.

Q. 36. Have you ever been on the Draper farm since you moved to Duncannon?

A. Yes, sir; about three or four months ago I was at the front door of the house. It was on the day of the picnic of the Marysville band. I was not on any other part of the farm. There was no person at home. Mr. Sholl was living there at the time. That is the only time I have been there since I moved to Duncannon.

Adjourned until January 7, 1884, at 11, A. M.

January 7, 1884, 2, P. M.

Examination resumed.

Present, same counsel.

Examination of John H. Harper by Mr. Jacobs continued:

Q. 37. What became of that "first litter of pigs" mentioned in your 15th answer?

A. I killed them in the fall of 1876, while I was farming for Theo. Fenn, Jr.; there were three of them.

Q. 38. At about what age had they arrived when you killed them?

A. Ten or eleven months—along there.

Q. 39. Was any one along with you when you drove the breed-sow to Kissinger's place in the summer or fall of 1875?

A. My youngest son was with me—about eleven or twelve years old; his name was Franklin Elmer Harper; there was no one else with me.

Q. 40. I observe that in your first answer you say that you have been living in and around Duncannon for seven years; and further on in the same answer you say that you went there about the first of March or the last of February, 1878; I wish to call your attention to the fact that if you have been living there for seven years you must have moved in 1877, and not in 1878; will you state which one of the two dates is correct?

[*Objected to as incompetent.*]

A. Yes; it was in 1878; I looked that matter up while I was at home; it was in the last of February, 1878. It was only six years, and I made a mistake.

Q. 41. When you moved from Marysville to Duncannon, how were your household goods transported from the farm to the latter place?

A. I shipped them on the cars by the Pennsylvania railroad from Marysville—all but the cow; I drove that up.

Cross-examined by Mr. Howson:

Cross-Q. 42. What were you doing between the time you quit the Fenn farm and the time you moved to Duncannon?

A. I didn't do anything until harvest; and then I helped to cut young Mr. Fenn's grain, and threshed it all, and put it away, and sold the wheat to Hoffer here at Harrisburg. That was all I done in the fore part of the summer. After harvest awhile I went and bought two cows, and kept milk at the house. I had nothing to do, and just done that to pass the time.

Cross-Q. 43. Where and from whom was it that you bought the sow mentioned in your direct examination?

A. About three miles out from Harrisburg here, from a brother-in-law of mine named Jonathan Sheesley. I boxed her up, and shipped her on the cars.

Cross-Q. 44. From where?

A. Right down here from the Harrisburg station; I put her into the baggage-car; Mr. Reese was running the train at the time.

Cross-Q. 45. How many litters of pigs did that sow have while you lived on the Fenn farm?

A. We were unlucky with the sow, and we only had two litters.

Cross-Q. 46. When was this second litter?

A. In the summer of 1876.

Cross-Q. 47. Have you been living on one and the same place ever since you moved to Duncannon?

A. No, sir.

Cross-Q. 48. How many, and what different, places have you lived on since you moved there?

A. I left Marysville and moved on the little farm of my son-in-law—three years I lived there—about a mile and a half from Duncannon. Then I moved into Duncannon for one year; then I lived on Colonel Wister's farm one year, and now I am in Duncannon.

Cross-Q. 49. What business are you carrying on at the present time?

A. I am a carpenter. I carry on that when I get a good job.

Cross-Q. 50. How frequently were you on Mr. Kissinger's premises, on the Draper farm, during the first year you were farming Mr. Fenn's farm, which I understand was the next farm?

A. I was there pretty often. I couldn't tell you exactly how often—maybe half a dozen times in the year. Just whenever I had business.

Cross-Q. 51. And you visited Mr. Kissinger, I suppose, and he you, from time to time, on such little matters of business, until you left the Fenn farm in the spring of 1877; is that so?

A. Yes; he always knew where to find me when he wanted to borrow anything.

Cross-Q. 52. At whose request did you attend here to give your testimony, and when were you asked to do so?

A. They were after me when I lived on the farm of Colonel Wister, last winter, and asked me to come here—Mr. Fenn (I mean 'Squire William K. Fenn)—and I told them that time that there was no use in coming after me, for I had a pretty heavy stock that time, and was doing a butter-business, and I couldn't leave home for an hour; I told them money couldn't take me away; I had sixty head of cattle to attend, and made butter.

Cross-Q. 53. Was it at the request of the same 'Squire Fenn that you came here on Saturday last?

A. Yes, sir.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 7th day of January, 1884.

FRED. M. OTT,
Examiner.

JOHN H. HARPER.

GEORGE H. RUPLEY, *being produced, affirmed, and examined, saith:*

Examined by Mr. Hill:

My age is twenty-one; I reside at West Fairview, Cumberland county, Pa.; that is my post-office address; I am attending the University of Michigan.

Q. 1. In whose family are you living at West Fairview?

A. With my grandmother, Sarah Heck.

Q. 2. How long have you lived in her family?

A. Since I was two years of age.

Q. 3. What was your grandfather Heck's name?

A. John K. Heck.

Q. 4. When did he die?

A. In 1876, I believe; that is as near as I can recollect.

[*Answer objected to by Mr. Howson as not evidence.*]

Q. 5. Last March, in Philadelphia, Amos Frownfelter and his son William were examined as witnesses on behalf of complainants in this case (see pp. 1225 to 1235, complainants' printed record.) Mr. Amos Frownfelter testified, (p. 1226,) in substance, that in April 1874, he moved on to Mr. J. K. Heck's farm, about two miles above Fairview, Cumberland county, about four miles from Milltown, and lived there three years until the spring of 1877, when he moved on to the farm which he now occupies; are you personally acquainted with Mr. Amos Frownfelter and his son William?

A. I am.

Q. 6. Do you know what Mr. John K. Heck that was, whose farm Amos Frownfelter moved on to in April, 1874?

A. My grandfather.

Q. 7. Did you live there on that same farm while Mr. Frownfelter lived on that farm?

A. Yes, sir; with my grandfather.

Q. 8. Did you ever at any time have any conversation with William Frownfelter, Amos Frownfelter's son, in regard to Daniel Drawbaugh's talking-machines?

[*Objected to as leading.*]

A. Yes, sir.

Q. 9. Will you state what that conversation was?

A. He told me that Daniel Drawbaugh had a wire strung along the fence above his shop, used for the purpose of speaking or transmitting speech.

[*Objected to by Mr. Howson as not evidence.*]

Q. 10. Where were Amos Frownfelter and his son William living at the time when William told you that?

A. In one of my grandfather's tenant-houses.

Q. 11. Where was that tenant-house?

A. I suppose it was about half a mile above where the old mill stood on my grandfather's farm.

Q. 12. In what house did Amos Frownfelter and his family live during the three years from April 1, 1874, to April 1, 1877, when, as he says, he lived on Mr. J. K. Heck's farm?

A. The house that I have just designated.

Q. 13. And it was while they were living in that house, was it, that William Frownfelter told you about Drawbaugh's talking-machine?

[*Objected to as leading.*]

A. Yes, sir.

Q. 14. Do you remember the circumstances under which William Frownfelter and you had that conversation together?

A. Yes, sir; I do.

Q. 15. Please state how it happened—what you were doing at the time, etc.

A. At that time all the spare time that I had I put in working on different things on the loft of my grandfather's pig-sty; the machine that at that time I was constructing was a turning-lathe; at times he would come over and help me; he turned for me, and at one time turned some faucet handles; he then told me about Mr. Drawbaugh, and that he had been down there quite frequently and would often turn faucet handles for them at the shop. He then told me, among other things, of Mr. Drawbaugh's having the wire along the fence.

Q. 16. How certain are you that that conversation occurred during the time when the Frownfelters lived on your grandfather's farm?

[*Objected to as incompetent.*]

A. I don't remember him ever being where I was working after they moved away.

Q. 17. That doesn't quite answer the question, Mr. Rupley.

[*Objection continued.*]

A. I am positively certain.

Cross-examined by Mr. Howson:

Cross-Q. 18. When was your twenty-first birthday?

A. The 21st day of September, 1883.

Cross-Q. 19. How long have you been attending the University of Michigan?

A. Since the fall of 1883; I entered at the beginning of the fall term.

Cross-Q. 20. What, if any, work were you doing before that time, and where?

A. I had been attending school at the Missionary Institute at Selin's Grove, Pa.; I worked for Mr. Daniel Drawbaugh, or Drawbaugh and Chellis, and also worked several months for the foundery and machine department of the Harrisburg car-shops.

Cross-Q. 21. When was it, and how long, that you worked for Messrs. Drawbaugh and Chellis?

A. I went there in the latter part of December, 1880, and worked, as near as I can remember, till some time either in the latter part of July or some time in August, 1881.

Cross-Q. 22. Have you, or have you ever had, any of the stock of the People's Telephone Company?

A. I have.

Cross-Q. 23. How much of such stock have you, and from whom did you procure it?

[*Objected to as immaterial, and as an improper inquiry into the witness' private business.*]

A. I have twenty-five shares. I procured it through Mr. Daniel Drawbaugh.

Cross-Q. 24. How long have you had those twenty-five shares?

[*Same objection.*]

A. Since 1881.

Cross-Q. 25. How much did you pay Mr. Drawbaugh, or any other party, for those shares?

[*Same objection.*]

A. I gave ten dollars a share for it.

Cross-Q. 26. Was this ten dollars a share all your own money; or did it include money of friends or acquaintances?

[*Same objection.*]

A. It didn't include the money of Mr. Drawbaugh, at any rate. It was my own; and further, I procured the money through my father.

Cross-Q. 27. Referring to your answer to interrogatory 9, are we to understand you as undertaking to give the very words of Mr. Frownfelter, or simply the expression, in your own words, of your recollection of the substance of what Mr. Frownfelter said to you on the occasion referred to?

A. My own words. I do not recollect the words given by Mr. Frownfelter.

Re-direct by Mr. Hill:

Q. Q. 28. How certain are you that you have accurately given in your 9th answer the substance of Mr. Frownfelter's statements to you at the time referred to?

[*Objected to as incompetent.*]

A. I have given it as near as I can remember it.

Q. Q. 29. In what department of the University of Michigan are you studying?

A. The mechanical engineering department.

Examination taken, reduced to writing, and by the witness affirmed and subscribed to before me, this 7th day of January, 1884.

FRED. M. OTT,
Examiner.

GEORGE H. RUPLEY.

CHRISTIAN I. HEISLEY, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

My age is twenty-nine; I reside three miles west of Perrysville, Perry county, Pa.; I am a stone-mason.

Q. 1. What was your father's name?

A. Philip Heisley.

Q. 2. And your brothers'?

A. P. J. Heisley, and Joseph, and Philip, and Will, and Dan, and Edward, and Charles, and George.

Q. 3. What are the names of the three oldest brothers in the family?

A. Pete, and Joe, and myself.

Q. 4. Do you remember where you were living, and what you were doing, in the year 1874?

A. I was working in the lumber woods that winter of 1873–4, at Trout Run. As soon as the weather opened I went to masoning up about Williamsport, Pa. My book will show that I worked there up to the best part of September. I came home then; and then I worked around Marysville for different parties the rest of the year; and then I was around home all winter on until spring.

Q. 5. Will you please produce the book which you have referred to in your last answer?

A. Yes, sir; here it is.

Q. 6. In whose hand-writing are these entries in the book?

A. They are all in my own.

Q. 7. On the inside of the first leaf of the book I find certain entries commencing April 27, 1874, of mason work for Morton Myers, and specifying work on four days in April, on five days in May, on one day in July, and on two days in August; where did Morton Myers live?

A. Morton Myers lived about eight miles above Williamsport, at a place called Perryville. He kept a store there.

Q. 8. Did you or not work for him as set forth in this account-book?

[*Objected to as incompetent.*]

A. I did.

Q. 9. Who was the first man you did work for in the early part of that summer around Williamsport?

A. I can't remember. I have only the book to show for it. I don't know whether I did any work before that or not. I suppose I did, though.

Q. 10. On the next page of the book I find mason work done for Anthony Bomgardner from May 11th to May 16th, 1874, entered; did you work for him?

[*Objected to as leading and incompetent.*]

A. Yes, sir; I did.

Q. 11. Where did he live?

A. He lived in Cogan valley, about sixteen miles above Williamsport.

Q. 12. Where did F. Lantz live?

A. He lived right alongside of my father in Perry county, Pennsylvania.

Q. 13. Where did J. Hall live?

A. He lived in Rose valley, above Williamsport.

Q. 14. The book seems to show that you were working for F. Lantz September 6, 7, 8, and 9th, 1874; had you at that time returned to Perry county from Williamsport?

[*Objected to as leading and incompetent; and a general objection is here made to this mode of examining, as leading the witness by reference to a book or paper not in evidence, nor, so far as appears, competent evidence.*]

A. Yes, sir.

Q. 15. Will you please point out in the book the last entry that relates to work done by you in the vicinity of Williamsport in the year 1874?

A. Hall's was the last one that I remember that I done in 1874.

Q. 16. Will you please look at the book and state what time you did the last work for Hall in the year 1874?

A. August—from the 17th to the 24th.

Q. 17. From the time when you worked for Morton Myers, April 27, 1874, to the time when you did the last work for J. Hall, August 24th, 1874, where were you working—that is, in what part of the country?

A. I worked in Cogan valley and through Rose valley and around Cogan station.

Q. 18. During that time, from April 27th to August 24th, were you in Perry county any, or not?

A. Not during the time I was working.

Q. 19. You have stated that in the winter of 1873–'4, you were working in the lumber woods at Trout Run, and when the weather opened you went to masoning about Williamsport; between the time when you left the lumber woods and the time when you went to masoning about Williamsport, where were you and what were you doing?

A. I don't remember.

Q. 20. Were you at home any that spring or not?

[*Objected to as leading and as incompetent in view of the last answer.*]

A. That is more than I can tell you.

Q. 21. I find the name of William Reed in the book as one of the parties that you worked for in May, 1874; where did he live?

A. He lived up near the line of Tioga county.

Q. 22. I also find in the book the name of D. Bryon, as a party you worked for in May and June, 1874; where did he live?

A. He lived within about three-quarters of a mile of Mr. Reed.

Q. 23. I also find the name of George Secrist as a party you worked for in June, 1874; where did he live?

A. In Cogan valley.

Q. 24. I find the name of Robert Wood in the book as a party you worked for in June, 1874; where did he live?

A. In Cogan valley.

Q. 25. I find the name of Louis Wigle as a party you worked for in June and July, 1874; where did he live?

A. He lived near Mr. Wood.

Q. 26. I find in the book the name of Coleman Wigle as a party you worked for in July, 1874; where did he live?

A. He adjoined farms with Louis Wigle.

Q. 27. I also find the name of Daniel Stroub as a party you worked for in July, 1874; where did he live?

[*This line of examination objected to as immaterial and a useless expenditure of time.*]

A. He lived close by Mr. Wigle's.

Q. 28. And I find the name of Edward Heilman as a party you worked for in August, 1874; where did he live?

A. At Cresent Iron Works, about eight miles above Williamsport.

Q. 29. Between the account of the work done for Mr. Hall in August, 1874, ending August 27, and the account of the work done for F. Lantz, commencing September 6, 1874, there appears to be entered in the book a memorandum of a settlement with D. Miller, dated September 1, 1874; where did Mr. D. Miller live?

A. D. Miller lived with my uncle, about five miles above Williamsport.

Q. 30. You have stated that these entries in the book were made by you; when did you write them in the book?

A. I wrote them in just as I done the work.

Q. 31. In whose possession has this book been from that time to this?

A. My own.

Q. 32. After the end of Mr. Lantz's account, and on the next succeeding page, there appear entries of mason work done for William Shafer; where did he live?

A. Adjoining farms with my father.

Q. 33. On the next page appears an entry of work done for James Bell; where did he live?

A. On top of the Cove mountain, above Marysville.

Recess until 7.30, P. M.

Q. 34. On the next page appears an entry of labor for C. Heisley, in December, 1874; who is he, and where does he live?

A. He is my uncle, and lives five miles from Duncannon.

Q. 35. On the page following there is an entry of work for Israel Dick, in April, 1875; who is he, and where does he live?

A. He lives on the farm adjoining my father's; he is now my father-in-law.

Q. 36. On the next following page is an entry of work down for Theo. Fenn, on May 6, 7, and 8, 1875; who was he, and where did he live?

A. A brother of Squire William K. Fenn, and lived at Marysville.

Q. 37. And on the next following page is an entry of work for Edward Heilman, commencing May 12, 1875, and running through portions of May, July, and August; where did he live?

A. He was the same man I worked for before; he lived at Crescent Iron Works.

Q. 38. Do you mean the same Edward Heilman whom you worked for in August, 1874, as shown by your book?

A. The same man; yes, sir.

Q. 39. Where did you do that work for him in May, July, and August, 1875?

A. I done that around the Crescent Iron Works.

Q. 40. Then I should judge that you went back from Perry county to the Williamsport region some time in the spring of 1875; am I correct?

[*Objected to as a leading and improper mode of inquiry.*]

A. Yes, sir; sometime between the 8th and 12th of May.

Q. 41. How long did you remain in the Williamsport region that year before you returned to Perry county again?

A. I can tell by this book. [Witness refers to book.] I returned somewheres near the Christmas holidays, as near as I can tell.

Q. 42. In what year was the last summer that you worked around the Williamsport region?

A. The spring and summer of 1875.

Q. 43. Where were you living and working from the time when you

returned from the Williamsport region, in September, 1874, till you went back to the Williamsport region, sometime between the 8th and 12th of May, 1875?

A. I was living at home with my father, and working around home.

Q. 44. Do you know whether or not any bored wooden pipes have ever been in use on that place of your father's?

A. Yes, sir; there has.

Q. 45. When did you first know of their being in use there?

A. In the fall of 1875, when I returned home—did I say 1875?—I meant 1874.

Q. 46. About what time in the fall did you first know of their being there?

A. In September.

Q. 47. How happened you to know of those pipes being in there in September, 1874, and what do you remember about them at that time?

A. They didn't carry the water the way he wanted them, and as I was at home we went to see what was the matter with them, and found they leaked, and we fixed them; and then they didn't work, and we left them till the next spring; and then we put some new joints in and had to bore some new pipes. My brother Pete got the auger from Mr. Keller, and we bored the pipes and replaced them.

Q. 48. At what time in the spring of 1875 did you bore the pipes and replace them?

A. In March.

Q. 49. Do you know how long it took to bore those pipes and replace them for the purpose of mending the old pipes?

A. I don't know just how long it took us; but we had the auger about two weeks; and in the meanwhile Mr. Kissinger came and inquired of us, and said he wanted the auger to bore pipes; and I said we were done with it, but it belonged to Mr. Keller, and that he should inquire of him, as he owned the auger.

Q. 50. What Mr. Kissinger was that?

A. It was the Mr. Kissinger who lived on the Draper farm. I forget his first name if I ever knew it; I forget.

Q. 51. Will you please look at your book and give me the names of the different parties that you worked for in the Williamsport region in summer and fall of 1875, in the order in which they occur in the book, and commencing with Edward Heilman's name?

A. Edward Heilman is the first—Joseph Aderhold, Benjamin Bowesr,

Jacob Whitman, Abraham Gloser, Samuel Reed, Jacob Ritter, Jacob Shuck, William Stoltz, George Miller; then I have Edward Heilman again; then Henry Hammerstein, George Miller, again; Theo. Smith, John Losch, John Deremer, Peter Spotts, Thompson Hayes; that, I guess, finishes the lot.

Q. 52. When and by whom were these entries written in this book so far as they relate to work done in the summer and fall of 1875, for the several parties named in your last answer?

A. They were written by me just as I had done the work.

[*Defendants' counsel requests the examiner to make and file with the exhibits in this case, as "Exhibit Heisley Time-Book, 1874 and 1875," a copy of the several entries in the book in the order in which they there appear, from the commencement of the book to and including the entry of the work for "Thompson Hase," November 18 and 19, 1875.*]

Q 53. You have stated in substance that when you returned from the Williamsport region to your father's farm in September, 1874, you found the wooden pipes in, and found they leaked, and you fixed them, but they didn't work, and so you left them till the next spring; do you remember how you tried to fix them in the fall of 1874 when you didn't succeed in making them work?

[*Objected to as leading.*]

A. Yes, sir; we tried to pitch them and shut them up.

Q. 54. How certain are you that it was in the spring of 1875 that you had the auger there for the purpose of boring pipes to mend the wooden pipes with, and that Mr. Kissinger came and wanted to borrow the auger?

[*Objected to as leading and incompetent.*]

A. I am certain of that because it was the only time I had been at home at that season—that spring—and I helped to bore them myself. I can remember as well when Mr. Kissinger came past there, and asked for the auger, as if it was last year.

Cross-examined by Mr. Howson:

Cross-Q. 55. Where were you, and what doing, in March, 1876?

A. I was around home helping my father on the farm. Did you say 1876—I misunderstood that. I thought you said 1875. I don't remember where I was, or what doing, in March, 1876.

Cross-Q. 56. Same question as to March, 1877?

A. In March, 1877, I was with my uncle. I was farming for him.

Cross Q. 57. Same question as to March, 1878?

A. I don't remember in March, 1878.

Cross-Q. 58. What is the name of the uncle you say you were with in March, 1877?

A. Christian Heisley.

Cross-Q. 59. Are you quite clear in your recollection that you were with that uncle during the whole or greater part of March, 1877?

A. I don't know positively whether I had been there all the month.

Cross-Q. 60. Where were you and what were you doing during the month of March, 1879?

A. I had been around home helping my father.

Cross-Q. 61. You are quite positive about that now, are you?

A. Yes, sir.

Cross-Q. 62. I find mentioned in this account-book of yours the names James Bell, John Frymyer, J. Fortenbaugh, and Hiram Hipple, as parties for whom you have done work; where did these several parties live at the time you worked for them?

A. In Rye township, Perry county—all of them.

Cross-Q. 63. You have told us that you bored, or helped to bore, certain wood pipe for purposes of repair on your father's farm; how much wood pipe, according to your recollection, was cut and bored at that time?

A. I am not able to tell just how much.

Cross-Q. 64. Give us the best of your recollection, if you have any.

A. I don't just recollect; I can't give the number of pieces because we bored several pieces that we spoilt.

Cross-Q. 65. Did you do most of the boring that was done on that occasion; if not, who did?

A. No, sir; I didn't; my brother Pete did the most of it.

Cross-Q. 66. Did you personally do any considerable portion of it?

A. Yes, sir; I helped him.

Cross-Q. 67. How long were you and he at it?

A. I don't remember that.

Cross-Q. 68. Can you tell us about how much new pipe was put in to replace the pipe that was leaking?

A. No, sir; I can't.

Cross-Q. 69. Do you know whether or not there have been any repairs on that pipe since that time, or on any of it?

A. Not to my recollection.

Cross-Q. 70. Were you at home in the fall and winter of 1875, 1876, and 1877, or any of those falls and winters?

A. I have been at home most of the time during the winter till I got married.

Cross-Q. 71. My inquiry is whether you particularly recollect whether you were or were not at home during those particular falls and winters.

A. I have been at home most of the time during the winter.

Cross-Q. 72. The fact is, that it is your custom to be at home with your father in each year from say October or November until March or April of the spring following; is that correct?

A. I have not always been there, but I have been there the best part of the time in winter.

Cross-Q. 73. Please name particularly all the years of which the statement of the last question will not be true.

[*Objected to as obscure.*]

A. I have been at home part of the time during the fall and winter of 1876, when I have had no work outside of home.

Cross-Q. 74. How about 1877?

A. In 1877 I have been back and forward, and part of the time have been at home helping my father.

Cross-Q. 75. And the same has been true of every year since 1877, hasn't it?

A. Not in 1879, it hasn't.

Cross-Q. 76. Every year then except 1879, is that it?

A. Yes, sir; I worked in the Fairview rolling mill in 1879.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 7th day of January, 1884.

FRED. M. OTT,
Examiner.

C. I. HEISLEY.

Adjourned until January 8, 1884, at 10, A. M.

January 8, 1884, 12, M.

Examination resumed pursuant to adjournment.

Present, same counsel.

WILLIAM P. CHAMBERS, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

My age is thirty: I reside in Harrisburg, Pa.; occupation, musician.

Q. 1. Where did you reside last before you lived in Harrisburg?

A. In Newville, Cumberland county, Pa.

Q. 2. How long did you live in Newville?

A. My parents moved to Newville in the fall of 1865; that would make it fourteen years that I lived in Newville.

Q. 3. When were you married?

A. January 20, 1876, at 1, P. M.

Q. 4. How soon after your marriage did you go to keeping house, and where?

A. On the first day of April, in the same year, in a brick house owned by Mr. Ahl, on Railroad Street, Newville, near the depot.

Q. 5. How long did you live in that brick house?

A. One year.

Q. 6. Were you at the Centennial Exhibition, at Philadelphia, in 1876, or not?

A. Yes, sir; I was.

Q. 7. How many times?

A. Twice.

Q. 8. What was the date of your first visit to the Centennial Exhibition, and how happened you to go there on that occasion?

A. It was on June 1st with the Newville band, to play on the Knight Templars' parade.

Q. 9. What was the date of your second visit to the Centennial, and how happened you to go there then?

A. On the 5th of September, with the State Capital band of Harrisburg in connection with the Hope fire company.

Q. 10. How long were you down there with the Hope fire company on that visit?

A. I think it was four days—5th, 6th, 7th, and 8th. I came home on Saturday—got to Newville on the following Saturday.

Q. 11. Were you ever at the village of Eberly's Mills or Milltown, Cumberland county, Pa.; if so, how many times in the course of your life?

A. I was—only once.

Q. 12. When was that?

A. That was as near as I can recollect the last week in August, 1876.

Q. 13. Was it before or after your visit to Philadelphia with the State Capital band and the Hope fire company?

A. Just before.

Q. 14. How long before?

A. Just one week before.

Q. 15. How happened you to go to Milltown on that occasion?

A. I went with H. F. Drawbaugh to Philadelphia, and on our return we stopped at Milltown.

Q. 16. How happened you to go with H. F. Drawbaugh to Philadelphia at that time?

A. I don't understand exactly what you mean by that, sir.

Q. 17. I mean, what business took H. F. Drawbaugh to Philadelphia at that time, and what business, if any, took you to Philadelphia with him at that time?

A. He was in the produce business, and took produce to Philadelphia—with the understanding that we would get back to have time to go to Daniel Drawbaugh to see his talking-machine. There were four of us: myself and H. F. Drawbaugh went to Philadelphia, and his son Charles and young Dunlap—G. W. Dunlap—went to New York. It would take them longer to go to New York and return than it would for us to go to Philadelphia and return; so we had time enough to spare to go over and see the machine, and still get home the same day that they did.

Q. 18. Mr. George W. Dunlap has been examined as a witness in this case, and testified, among other things, that he made two trips to New York on Mr. H. F. Drawbaugh's car in 1876, about two weeks apart; do you remember whether that was at the time of his first or second trip?

[*Objected to as leading and improper.*]

A. His second trip.

Q. 19. He also testified that after returning from New York on his first trip, he and Mr. W. P. Chambers and Mr. H. F. Drawbaugh were all together in the band room, at Newville, and he told Mr. W. P. Chambers about a visit that he himself had made to Milltown at the time when he made his first trip to New York; have you or have you not any recollection of that conversation?

[*Same objection.*]

A. I recollect of him telling me of a wonderful talking-machine that he saw at Daniel Drawbaugh's shop.

Q. 20. Did he tell you about that before or after you yourself made your visit to Milltown?

A. Before.

Q. 21. When you went over to Milltown, where did you leave the car that you had used in going to Philadelphia with Mr. H. F. Drawbaugh?

A. At Bridgeport.

Q. 22. You state, in your 17th answer, that Mr. H. F. Drawbaugh was in the produce business, and took produce to Philadelphia, at the time when you went to Philadelphia with him, in August, 1876, as as you have testified; did he bring back any return freight from Philadelphia? If so, what?

A. He brought back some fruit.

Q. 23. What kinds of fruit?

A. There were some few peaches and cantelopes. That was about the last run of fruit. I recollect of him having a hard time getting any at all scarcely.

Q. 24. When you left the car at Bridgeport and went over to Milltown, how did you go over to Milltown and back?

A. We walked.

Q. 25. Who went over to Milltown with you?

A. Mr. H. F. Drawbaugh?

Q. 26. What did you go to Milltown for on that occasion?

A. From curiosity to see the talking-machine.

Q. 27. Did you see it or not?

[*Objected to as leading, and also as not rebuttal.*]

A. I saw part of it.

Q. 28. Where did you see that?

A. I saw it on his work-bench at the right-hand corner of his shop as you enter.

Q. 29. Whose work-bench and shop?

A. Dan Drawbaugh's, I suppose.

Q. 30. Where did you get your dinner that day?

A. At Squire Drawbaugh's.

Q. 31. Who dined there at Squire Drawbaugh's that day?

A. There were four of us—the Squire, Dan, Harry, and myself.

Q. 32. Do you know where Daniel Drawbaugh was living at that time?

A. In Mechanicsburg.

Q. 33. Were you ever at his house at Mechanicsburg? If so, when, and how happened you to be there?

A. Yes, sir; it was at the time there was a band convention held at Mechanicsburg. There were five or six of us took supper with him. Afterwards the band serenaded him—the same evening.

Q. 34. Was that before or after your visit to Milltown?

A. It was after, I think; I ain't certain about that, but I think it was after.

Recess until 2, P. M.

Q. 35. How long were you in Mr. Daniel Drawbaugh's shop at the time you were at Milltown?

A. I can scarcely give you the number of hours, but we left Bridgeport near about nine o'clock, and it was about two or three when we arrived there again, in time to take the cars for home; I should think I spent about two hours and a half in his shop.

Q. 36. Were you in his shop before dinner?

A. Yes, sir.

Q. 37. Were you there again after dinner?

[*Objected to as leading.*]

A. Yes, sir.

Q. 38. When you first went to Mr. Drawbaugh's shop that day, whom did you find there in the shop?

A. I don't recollect seeing any person but Dan himself.

Q. 39. Was 'Squire Drawbaugh there in the shop at any time that day while you were there or not?

[*Objected to as leading.*]

A. He was not.

Q. 40. Did anybody come to the shop to call Daniel Drawbaugh to dinner that day or not?

A. There was a little girl; I think it was George Drawbaugh's little girl; he lived just next door to the 'Squire.

Q. 41. Who invited you and H. F. Drawbaugh to Squire Drawbaugh's to dinner that day?

A. I don't really know who it was.

Q. 42. Do you know whether it was any of Squire Drawbaugh's family or not?

[*Objected to as incompetent.*]

A. I don't know who gave the invitation, but I know we three went up to dinner.

Q. 43. When and where did you first see Squire Drawbaugh that day?

A. I saw him at his house just at dinner time, the first time I saw him?

Q. 44. You have stated that you saw at Daniel Drawbaugh's shop that day a part of the talking-machine; was it before or after dinner that you saw that?

A. After dinner.

Q. 45. Where was H. F. Drawbaugh at the time you saw that?

A. He was sleeping in the back part of the shop.

Q. 46. Describe the outward appearance of the talking-machine or part of a talking-machine that you saw there that day.

A. The part which I saw resembled a cornet-box that I had with me at the time. It was made of walnut. My cornet-case was thirteen inches long and eight inches wide and three and one half inches high. I set the case on the work-bench beside the machine, and remarked to Dan that it would make a good cornet-case, the only difference being the inclined face-board. The talking-machine, as it was called then, had a bell on the top and a mouth-piece in the center of the inclined face. I remember distinctly of him telling me that I could play a cornet solo in Newville, and he would have the benefit of it at the mill—that is, play into the machine. Just while I was there he opened the face, and I remember of seeing in the right-hand corner what I supposed to be a small tin can, with wires attached. When he was about to explain to me the use of it, there was a man came into the shop, and asked Dan whether he had his clock done yet. As I understood, he was fixing a twenty-four hour clock for the man, and had promised to have it done for three weeks—had had it on hand for three weeks. That called him away from the machine, and that was the last I saw of it. It spoiled my interest.

Q. 47. Will you please look at the machines marked "B," "F," "C," "I," "A," "D," "E," "G," "O," "L," "M," "H," which will be now placed on the table before you, and state whether you do or do not identify any of them as the instrument which you saw there at Daniel Drawbaugh's shop that day?

[*Objected to as incompetent, no sufficient foundation having been laid for the question.*]

A. The only one I recollect is that one, [indicating "H."] It was standing on his work-bench when he showed it to me; I do remember of him working at a mouth-piece something like the mouth-pieces of these machines, [indicating "D" and "E:"] it had broken for him and he had it on his work-bench.

Q. 48. What was he doing to that mouth-piece at the time, if anything?

A. He was just about to glue it in some way; he was heating his glue, and had the mouth-piece lying on his bench on some paper; it got very warm in the room, and he hoisted the window in front of the work-bench, and just as he was about to glue it the wind blew it down on to the floor and broke it, which made Daniel very angry; I wouldn't like to repeat what he said.

Q. 49. I will open the instrument, "Exhibit H," and ask you to look at the inside of it and at the door, and state what parts you find in it now, if any, which you remember to have seen inside of it at the time you saw it at Mr. Daniel Drawbaugh's shop in 1876.

[*Same objection.*]

A. I recognize the little tin can, as I supposed it to be, and the wires coming from it; on the inside of the door—I don't remember exactly what was there, but it seems to be the same. I remember having seen a circle on the inside of the door.

Q. 50. By the tin can which you saw on the inside of the box, and which you say you see here now in "Exhibit H," with wires connected to it, do you mean this thing here? [Indicating the induction coil.]

[*Objection continued.*]

A. Yes, sir.

Q. 51. Please look at these brass binding posts on the right-hand side of the machine, outside of the case or box, and state whether you do or do not remember anything of that kind on the box or instrument which you saw in 1876 at Drawbaugh's shop.

[*Objected to as a leading and improper mode of inquiry.*]

A. Yes, sir; I remember very distinctly of seeing those, as they were just towards me.

Q. 52. What other machinery, if any, did you see in Mr. Drawbaugh's shop that day?

A. I saw his electric clock, which was hanging against a partition in the same room. Also, his machine for making insulated wire, and his alphabetical telegraph, and a number of other small articles. I don't remember what they were now. These articles were in a room to the left of the entrance.

Q. 53. Did you have any conversation with Mr. Drawbaugh about the machine for insulating wire? If so, what?

[*Objected to as immaterial, irrelevant, and not rebuttal.*]

A. I did. He wanted me to use the instrument to make strings for string instruments—for guitars and for the G string of violins.

Q. 54. Did he say anything about what he did with the wire which he insulated by means of that machine? If so, what?

[*Objection continued.*]

A. Yes, sir; he did. He said he used it for his talking-machine. He had a coil just made at the time lying on his bench.

[*Answer objected to by Mr. Howson as not competent evidence.*]

Q. 55. When was the last time that you were ever in Mr. Daniel Drawbaugh's shop at Milltown?

A. At this time—the first and last combined.

Q. 56. By "this time," do you mean the time when you were there, about which you have just been testifying?

A. Yes, sir.

Q. 57. You have told us that shortly before you went down to Milltown on that occasion, G. W. Dunlap mentioned to you his visit to Daniel Drawbaugh's shop; was that, or was it not, the first time that you had ever heard of Mr. Drawbaugh's talking-machine invention?

[*Objected to as incompetent.*]

A. No, sir; I heard of his invention at least two years before that.

Q. 58. Where did you first hear of it, and under what circumstances?

[*Objected to as incompetent, and not rebuttal.*]

A. In the band-room in Newville I heard Mr. H. F. Drawbaugh talking a great deal about it at different times.

Q. 59. Were he and you members of the same band there at Newville?

A. Yes, sir.

Q. 60. Were you a member in Newmeyer's State Capital Band in 1876?

A. No, sir; I was hired by them to play on several engagements.

Q. 61. Have the instruction and drilling of bands and orchestras been a portion of your business?

A. Yes, sir; since 1874.

[*Entire deposition objected to as new matter, not rebuttal, and cross-examination, de bene esse, by Mr. Howson.*]

Cross-Q. 62. Was it in 1879 that you moved from Newville to Harrisburg?

A. Yes, sir; in the month of May, 1879.

Cross-Q. 63. And down to May, 1879, you and Mr. H. F. Drawbaugh were residents of the same town or village; is that correct?

A. Yes, sir.

Cross-Q. 64. What was the maiden name of the lady you married?

A. Annie E. Drawbaugh; she was a daughter of H. F. Drawbaugh, referred to in my testimony-in-chief.

Cross-Q. 65. Did you ever take more than one trip to Philadelphia with your father-in-law in his cars?

A. Only the one trip.

Cross-Q. 66. You have referred to an electric clock which you saw at Daniel Drawbaugh's on the occasion you have testified about; describe the appearance of that clock, as you recollect it—its size and so forth.

A. From the top of the clock to the bottom of the pendulum I would suppose it was three feet, or may be more. It had no face or dial plate on it. The pendulum was made of brass.

Cross-Q. 67. Did you see more than one of these electrical clocks at that time?

A. Only that one.

Cross-Q. 68. How long have you been personally acquainted with Mr. H. F. Drawbaugh?

A. I think it has been only since 1874. It may be in 1873, the first time I ever spoke to the man. I knew him by sight before that; but had not made his personal acquaintance.

Cross-Q. 69. Where and when did you first make the acquaintance of Squire or J. B. Drawbaugh?

A. At the time I visited Milltown, in August, 1876—the time mentioned in my testimony-in-chief.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 8th day of January, 1884.

FRED. M. OTT,
Examiner.

W. P. CHAMBERS.

JOSEPH F. HEISLEY, *being produced, affirmed, and examined, saith:*

Examined by Mr. Hill:

My age is twenty-eight; I reside at Marysville, Perry county, Pa.; I am a miller by trade.

Q. 1. Are you a son of Mr. Philip Heisley, and a brother of Peter J. Heisley and Christian Heisley?

A. Yes, sir.

Q. 2. Where did you work in the fall of 1873?

A. I worked for my uncle, Christian Heisley, about five miles west of Duncannon.

Q. 3. State, as near as you can, when you began working for him, and when you finished working for him.

A. I began to work for him some time during seeding, or about the beginning of September; I came home to my father's farm about the first of January, or along there—1874.

Q. 4. How long did you then live at your father's, from the time when you came home from your uncle's, about the first of January, 1874?

A. Up to October, 1877.

Q. 5. Where did you go to live in October, 1877?

A. I was then employed by E. Neyhart & Son, with the intention of learning the milling trade.

Q. 6. While you were employed by E. Neyhart & Son, in whose family did you make your home?

A. In old Mr. Neyhart's.

Q. 7. How far was his home from your father's house?

A. About a quarter of a mile.

Q. 8. And how far was E. Neyhart & Son's mill from your father's house?

A. About the same distance.

Q. 9. Is that mill still standing in which you first worked for the Messrs. Neyhart; and if not, what became of it?

A. That mill was burned in which I first worked.

Q. 10. Was another built in its place or not?

A. Yes, sir; it was rebuilt.

Q. 11. Did you work in it after it was rebuilt or not?

A. I did.

Q. 12. When did you do your last work in that mill for Messrs. Neyhart, I mean in their new mill.

A. In March, 1882.

Q. 13. Were you living at Mr. Neyhart's from October, 1877, until March, 1882?

A. Yes, sir.

Q. 14. After you left Neyhart's in March, 1882, what did you do?

A. I then made arrangements to put up a feed-mill of my own.

Q. 15. Where?

A. In Marysville.

Q. 16. When did you commence building that mill?

[*This line of examination objected to as immaterial and irrelevant.*]

A. In June, 1882.

Q. 17. And after completing the mill, have you been employed in it ever since?

A. Yes, sir.

Q. 18. While you were living at Mr. Neyhart's from October, 1877, to March, 1882, were you back and forth between his house and your father's house very frequently or not?

A. I was.

Q. 19. Did you ever, at any time, know of any log pipes being bored at your father's place?

A. Yes, sir; I do.

Q. 20. Whose auger was used in boring those pipes?

A. Emanuel Keller's.

Q. 21. How many times did they have that auger at your father's place?

A. Twice.

Q. 22. How many times did they ever bore any wooden pipes at your father's place?

A. Twice.

Q. 23. When they first had the auger there and bored the wooden pipes, what did they use those pipes for?

A. To bring water from the spring on my father's farm to the spring-house.

Q. 24. How did those pipes work—well or not?

A. They didn't work well—didn't work at all.

Q. 25. What was the matter with them?

A. They leaked.

Q. 26. Was any effort made to prevent their leaking; if so, what first?

A. We tried to repair the pipes by using tow and pitch.

Q. 27. How did that succeed?

A. It didn't better it.

Q. 28. You say that they had the auger there twice and bored pipe twice. What did they have the auger there for the second time?

A. The auger was used to bore a pen-stock the second time.

Q. 29. What was done with that pen-stock?

A. It was used for this line of pipes, at the end.

Q. 30. How did the pipes work after those repairs were made on them?

A. I think that they didn't do the work right after making the repairs.

Q. 31. How many times were those pipes ever repaired by putting in new pipes or pen-stocks?

A. Once, from the time they were laid.

Q. 32. How long did they have the auger there the second time?

A. I don't know the exact time.

Q. 33. A short time or a long time?

[*Objected to as incompetent and inquiring for mere guess-work.*]

A. It wasn't there long the second time.

Q. 34. Where did the auger go after they were done with it the first time?

[*Objected to as immaterial and irrelevant.*]

A. To 'Squire Adams'.

Q. 35. Where did the auger go when they were done with it the second time?

A. I don't know.

Q. 36. While they had it the second time, did anybody come for it? If so, who?

A. George Kissinger made inquiry for the auger.

Q. 37. Whom did he ask about it?

A. He asked me.

Q. 38. What did you tell him?

A. I directed him to some of the family; I cannot tell which one.

Q. 39. Some of what family?

A. My father's.

Q. 40. Tell us, as near as you can, when it was that those pipes on your father's farm were bored—both the first time and the second time that the auger was there.

A. They were bored between the beginning of 1874 and the beginning of 1876.

[*Complainants' counsel enter a general objection to the foregoing deposition as immaterial, irrelevant, and not rebuttal, and further object to all testimony taken or to be taken as to the alleged use of a certain auger upon the Heisley farm, or as to any matters pertaining to said alleged use of said auger, as importing into the case irrelevant and remote collateral issues.*]

Cross-examination waived by Mr. Howson.

Examination taken, reduced to writing, and by the witness affirmed and subscribed to before me, this 8th day of January, 1884.

FRED. M. OTT,
Examiner.

J. F. HEISLEY.

Recess until 7.30, P. M.

LEONARD SWARTZ, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

My age is fifty; I reside near Easton, Maryland; I am a farmer.

Q. 1. When did you begin to reside in Maryland?

A. On the 17th of March, 1880.

Q. 2. Where did you reside for ten years past prior to that time?

A. In the borough of Marysville, Perry county, Pa.

Q. 3. How far from Mr. Thomas Draper's farm?

A. As far as the farm is concerned, I had only to cross the road to reach the farm; the buildings were from five to eight hundred yards

from my house; I suppose that right across the fields it would not have been over five hundred yards, as near as I can get at it.

Q. 4. I believe your farm lay west of the Draper farm, did it not?

A. Rather south-west, but adjoining the Draper farm. Two fields of my farm lay to the west of the Draper farm, and the balance lay south of it.

Q. 5. Were you ever engaged in the dairy business?

A. Yes, sir.

Q. 6. How long?

A. Five years.

Q. 7. From what time to what time?

A. From about the 1st of April, 1875, to the 15th of March, 1880.

Q. 8. Where did you carry on that business?

A. Right where I lived, in the borough of Marysville.

Q. 9. Who occupied the Draper farm while you carried on the dairy business in the borough of Marysville?

A. George Kissinger.

Q. 10. Do you know a man named Cowan, who is a farmer near where you live in Marysville borough?

A. Yes, sir; he joined my farm on the west; he didn't live in the borough, though; he was just outside of the borough, in Rye township.

Q. 11. What is his full name?

A. David Cowan.

Q. 12. Did you ever rent his farm or work it?

A. Yes, sir.

Q. 13. In what years?

A. In the spring of 1875, at the same time I took the dairy route from him; he ran the dairy before, and I took the farm and the dairy route at the same time.

Q. 14. How long did you occupy or work his farm?

A. During 1875 and 1876—two years.

[*This line of examination objected to by Mr. Howson as immaterial and irrelevant.*

Respondents' counsel states that its materiality and relevancy will hereafter appear.]

Q. 15. Did you ever know of Mr. Cowan's putting in any wooden pipes on his farm to convey water?

[*Same objection, to apply to all succeeding questions on this line of examination.*]

A. Yes, sir.

Q. 16. When did he put them in?

A. In the spring of 1875.

Adjourned till January 9, 1884, at 10, A. M.

January 9, 1884. 10, A. M.

Examination resumed.

Present same counsel.

Examination of Leonard Swartz by Mr. Hill continued:

Q. 17. Where did Mr. Cowan put his wooden pipes in—from what place to what place on his farm?

A. From his spring, about forty rods from his house, running it into a stone milk-house or spring-house just across the private road from his dwelling-house. The private road was the road leading from the public road to his dwelling-house.

Q. 18. Did Mr. Cowan put in any pump or ram to force the water through the pipes, or did the water simply run through the pipes of its own gravity?

A. It run through of its own accord.

Q. 19. You say Mr. Cowan's pipes extended from the spring some forty rods to the milk-house or spring-house; through that distance were the pipes under ground or above ground?

A. I meant to say forty yards. If I said forty rods, it was a slip of the tongue. The pipes were under ground.

Q. 20. Was that ground in which the pipes were buried woodland, or pasture land, or grass field, or what?

A. It was a small meadow in timothy.

Q. 21. While you occupied that farm during the two years that you had it—1875 and 1876—what use did you make of that small meadow?

A. I put it in corn the first year—in the spring of 1875—I plowed it, and put it in corn.

Q. State, as near as you can, at what time in the spring of 1875 you plowed that meadow, and put it in corn.

A. As near as I can remember now, it was about the first of May, 1875.

Q. 23. Am I to understand you that it was grass land at the time that you plowed it in May, 1875?

A. Yes, sir; Mr. Cowan mowed it several years in succession for hay.

Q. 24. Were Mr. Cowan's pipes put in there before or after you planted your corn that spring in the small meadow?

A. They were putting them down at the same time we were getting ready to plant corn.

Q. 25. Do you remember who was employed in digging the ditch and putting the pipes in in that small meadow for Mr. Cowan that spring?

A. Yes, sir.

Q. 26. Who?

A. A man by the name of Webb. I don't know what his given name is. He was living in Mr. Cowan's tenant house at the time.

Q. 27. Do you remember how long Mr. Webb continued to live in Mr. Cowan's tenant house after you put the corn in there that spring?

A. As near as I can rememember, it was in the fall of the same year —1875—that he left.

Q. 28. Tell us whether or not you ever knew of Mr. Cowan's putting in any other pipes between his spring and milk-house, except those which he put in in the spring of 1875; if so, when?

A. He never put any in before or after, during the time I lived there.

Q. 29. During the time you lived where?

A. In the borough of Marysville, where I stated before. I lived on the same place ten years. I didn't live on the Cowan farm while I occupied it. I lived on my own farm.

Q. 30. Will you describe for us the wooden pipes that Mr. Cowan put in between his spring and his milk-house in the spring of 1875?—I mean, describe how they were constructed.

A. They were made of hemlock boards, as near as I can remember, about three inches by an inch and a half, tapering—one end smaller than the other.

Q. 31. Boards nailed together to make the pipe?

A. Yes, sir.

Q. 32. If I understand your description correctly, that would make a square pipe, tapering from one end to the other—that is, each section would taper from one end to the other. Am I correct, or not?

A. Yes, sir; you are correct.

Q. 33. How were the sections put together?

A. The small end of one section into the large end of another—jointed together in that way.

Q. 34. While you were working in that field during the two years that you occupied that farm, did you ever have occasion to get water

either at the spring or milk-house; and if yes, where were you accustomed to get water at different times?

A. Until it was completed we drank from the spring; afterward we got our water from the milk-house, as it was nearer.

Q. 35. Tell us whether you ever did, or did not, know of the boring of any wooden pipes, by Mr. George W. Kissinger, on the Draper farm, for the purpose of putting in a hydraulic ram to force water from the spring to his dwelling-house, on the Draper farm?

A. I did know of it.

Q. 36. When did you first know of Mr. Kissinger's boring those wooden pipes on the Draper farm?

A. In the spring of 1875.

Q. 37. If there is any circumstance that enables you positively to fix the time as in the spring of 1875, will you state what that circumstance was, and tell us about it?

[*Objected to as leading and incompetent.*]

A. Mr. Cowan was not positive as to what kind of pipe he should use, and went down to see Mr. Kissinger boring pipe, to see whether he might use the same. When he came back, some time afterwards, he concluded not to use that kind of pipe, and then went to Mr. Fisher, in Marysville, and engaged him to saw those described.

Q. 38. Do you mean that he engaged Mr. Fisher to saw those tapering boards which you have described as the boards out of which Mr. Cowan constructed his pipes?

A. Yes, sir.

Q. 39. Do you know where that Mr. Webb who assisted in laying Mr. Cowan's pipes moved to when he moved away from Mr. Cowan's place in the fall of 1875?

A. I can't think that I do.

Q. 40. Can you tell us whether he ever did or did not move back into Mr. Cowan's tenant house while you lived in the borough of Marysville?

A. Not while I lived there.

Cross-examined by Mr. Howson:

Cross-Q. 41. Will you give us your recollection a little more exactly as to the time in the spring when the laying of Mr. Cowan's wooden pipe was begun?

A. I can't give it any nearer than I did.

Cross-Q. 42. You have simply stated it as the spring, and wishing to have you fix the time as exactly as your memory will allow you to, I will ask you whether the work was begun early in the spring or late in the spring, or in what month?

[*Objected to as incorrectly stating the witness' testimony, as will clearly appear by reference to the 22d and 24th answers of the examination-in-chief.*]

A. As already stated, I fix the time about the 1st of May.

Cross-Q. 43. Do you fix that as the time at which the work was begun, or at which it was finished?

A. Begun.

Cross-Q. 44. How long before the work was begun was it that Mr. Cowan paid that visit to Mr. Kissinger which you have testified about?

A. During that same spring. I couldn't tell the exact day or time, but it was during that spring, before the work began.

Cross-Q. 45. In your answer to interrogatory 37, you say "when he" (meaning Mr. Cowan) "came back—some time afterwards—he concluded not to use that kind of pipe." From this I understand your recollection to be that some time elapsed between Mr. Cowan's visit to Mr. Kissinger and the beginning of the laying of Mr. Cowan's wooden pipe; is it a fact that some time did elapse between the two events; and if yes, about what length of time, according to your present recollection?

A. It could not have been very long at most; the time wouldn't permit it.

Cross-Q. 46. Did you go with Mr. Cowan on that visit to Mr. Kissinger?

A No, sir.

Cross-Q. 47. Do you know how long it took Mr. Fisher to fill the order which you say Mr. Cowan gave him after he made up his mind not to use the same kind of pipe that he saw at Kissinger's?

A. I don't recollect the exact time it took him.

Cross-Q. 48. Will your recollection serve you as to about the time?

A. It was not necessarily long, as Mr. Fisher has a steam planing-mill and circular saw, and could have done it inside of an hour if he had wished to.

Cross-Q. 49. I am not asking for your opinion or guesses as to what could be done, but for your knowledge or recollection, if you have any

as to what was done, and I will ask you to answer my last question upon that understanding.

A. According to the time the pipe was put in, it was in the month of April sometime; I can't give the exact date.

Cross-Q. 50. How long did it take to prepare and lay that wooden pipe after the boards came from the planing-mill?

A. I couldn't give the number of days; my recollection wouldn't serve me to give the number of days.

Cross-Q. 51. Was the trench for the reception of the pipe dug before or after the first of May, according to your recollection?

A. It was commenced when we commenced plowing for the corn—about that time.

Cross-Q. 52. Which was the job first done—the making of the pipe or the digging of the trench?

A. As near as I can remember, the pipe was made before the trench was commenced; he was working at them, I know; and I think he had them partly made or finished before the trench was commenced.

Cross-Q. 53. You and Mr. George W. Kissinger were neighbors, occupying adjoining farms in the year 1875, and from that down to 1879 or '80; is that correct?

A. Yes, sir; we both moved away together.

Cross-Q. 54. Who first came to see you about giving testimony in this case, and when?

A. Mr. Shireman, from York, Pa., I believe.

Cross-Q. 55. Do you know what Mr. Shireman's first name is, or what his business is?

A. No; I don't know, or don't remember if I do.

Cross-Q. 56. When was it that Mr. Shireman saw you about the matter and where, and did he see you more than once?

A. I believe it was in 1883, some time in the fore part of the year—some time in the spring, as near as I can remember it; it was at my house, near Easton, Md.; I never saw him but the once.

Cross-Q. 57. Mr. Shireman asked you, did he not, if you remembered the putting in of a ram on the Draper farm, and if you remembered when it was?

[*Objected to as incompetent, immaterial, and new matter not referred to in the direct examination.*]

A. Yes; he spoke to me about it, I know; I don't remember his words, and don't remember my answer exactly.

Cross-Q. 58. You then told Mr. Shireman, did you not, that you thought the ram was put in in the year 1877?

[*Same objection.*]

A. I said I had no recollection as to dates, only this transaction that I have related here—Mr. Cowan's pipes and so forth.

Cross-Q. 59. Do you wish to be understood as denying that you told Mr. Shireman that you thought it was in 1877?

A. I may have told him so, as I was not at all positive as to dates.

Re-direct by Mr. Hill, de bene esse:

Q. Q. 60. Are you positive now as to the date when the ram was put in?

[*Objected to as leading and incompetent.*]

A. I am not positive now as to the date the ram was put in—only as to when he commenced boring the pipe for it.

Q. Q. 61. Is Mr. George W. Kissinger a slack, careless, and procrastinating man, or an active, energetic, and prompt business man?

[*Objected to as not re-examination.*]

A. To the first I would say yes; he is that kind of a man.

Q. Q. 62. What do you mean by "to the first"?

A. To the first of your statements.

Q. Q. 63. You say that you and Mr. Kissinger moved away from Marysville borough together; did you mean that you moved away about the same time, or that you accompanied each other from Marysville to Maryland?

A. I meant the same spring, and not the same day, as I moved a few days before he did.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 9th day of January, 1884.

FRED. M. OTT,
Examiner.

LEONARD SWARTZ.

Recess until two, P. M.

FRANK D. HACKETT, *being produced, affirmed, and examined, saith:*

Examined by Mr. Jacobs:

My age is thirty; I reside at Newville, Cumberland county, Pa.; am a miller by trade.

Q. 1. Did you ever work at milling at Eberly's Mills, Cumberland county, Pa.?

A. Yes, sir.

Q. 2. When, and for whom?

A. In the spring of 1874, for Cyrus Bowman.

Q. 3. A witness named Cyrus Bowman was examined at Philadelphia, in November, 1882, on behalf of complainants in this case (see complts. printed record, p. 666, *et seq.*) and testified that at that time his age was fifty-three; residence, Mongul, Franklin county, Pa.; occupation, miller; that he had lived at Eberly's Mills from April first, 1874, to March first, 1876; and that during that time he there ran a mill belonging to George Leonard; is that the Cyrus Bowman for whom you worked at Eberly's Mills, or not?

A. That is the Cyrus Bowman.

Q. 4. Was he already living at Eberly's Mills when you went there to work for him, or not?

A. No, sir; I moved there right with him. I drove the horse and buggy down, and he came down in the train.

Q. 5. How long did you continue to work there for him?

A. I was there about six months.

Q. 6. Did you ever after that time work at Eberly's Mills?

A. No, sir.

Q. 7. Did you ever hear that Daniel Drawbaugh had a talking-machine at his shop at Eberly's Mills?

[*Objected to as leading, asking for hearsay, not evidence, and as new matter not rebuttal.*]

A. I heard it talked about.

Q. 8. When and where did your hear it talked of?

[*Objection continued.*]

A. I heard it talked of right in the mill—Eberly's mill—and in the store at Eberly's Mills. That was in the spring of 1874, while I was working for Cyrus Bowman.

Q. 9. Whom did you hear talk of it?

[*Objection continued.*]

A. I heard the people in the neighborhood there talk about it; Mr. Bowman and I talked about it ourselves.

Q. 10. What Mr. Bowman?

A. Cyrus Bowman, the miller.

Q. 11. You have said that you heard it talked of by people in the neighborhood; will you tell us whether it was talked of by many or by few people?

[*Objections continued.*]

A. There was a good many talked about it—back and forward.

Q. 12. Who was the store-keeper there at the time you heard it talked about in the store?

A. A young man by the name of Wilson; I don't remember his first name; I think it was Abner.

Q. 13. Is he living or dead?

A. He is dead, I think.

Q. 14. Do you know anything about the death of any of Cyrus Bowman's children whilst he lived at Eberly's Mills?

A. Yes, sir.

Q. 15. Please state which of his children died whilst he lived there, and whether or not you attended their funeral.

A. His two oldest daughters died while he live there; they were buried in Newville, and I went with the procession from the station to the grave-yard; they were both buried at the same time.

Q. 16. Where were you living at the time of their funeral?

A. At Mr. John Lindsay's; it was after I left Mr. Bowman's.

Q. 17. How long after?

A. I can't tell the exact time; I think his children were buried in 1875 sometime.

[*Entire deposition objected to as not rebuttal, and cross-examination, de bene esse, by Mr. Howson.*]

Cross-Q. 18. Have you been living at Newville ever since leaving Eberly's Mills?

A. No, sir.

Cross-Q. 19. Where else have you lived during the years since you left Eberly's Mills?

A. I lived about Newville all except one year since I lived at Eberly's Mills; I lived near Orrstown, Franklin county, that one year; that was 1876.

Cross-Q. 20. Are you now following the milling trade; and if not, what is your present occupation?

A. I am not following the milling trade now; I am running an engine for nearly a year—about nine months.

Cross-Q. 21. Running an engine for whom?

A. Piper & Goodhart.

Cross-Q. 22. At whose request did you attend here to testify in this case?

A. I don't know whose request it was; Harry Drawbaugh brought me here.

Cross-Q. 23. Do you mean H. F. Drawbaugh, who lives at Newville?

A. It was a man that lives at Newville; yes, sir.

Cross-Q. 24. How long have you known that Mr. Drawbaugh?

A. I can't tell the number of years I have known him; I have known him for a good many, though.

Cross-Q. 25. Not less than ten years?

A. I guess I have known him ten years.

Cross-Q. 26. How far apart do you and he live?

A. About a little over a square or block.

Cross-Q. 27. Have you and he at any time had business transactions together, or have you at any time done work for him?

A. No, sir.

Cross-Q. 28. What, if any, other business than milling and running an engine have you carried on since leaving Eberly's Mills and moving back to Newville?

A. I was in the hauling and draying businesss around through Newville—nothing else, only that I worked day's work for a little while.

Examination taken, reduced to writing, and by the witness affirmed and subscribed to before me, this 9th day of January, 1884.

FRED. M. OTT,
Examiner.

FRANK D. HACKETT.

WILLIAM H. SWARTZ, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

My age is twenty-three; my post-office is Harrisburg, Pa.; I am working for Mr. David Watts, in Susquehanna township, as hostler and driver.

Q. 1. Are you a son of Mr. Leonard Swartz, who testified here this morning?

A. Yes, sir; I am.

Q. 2. While your father lived in the borough of Marysville, Perry county, where did you live?

A. I lived with him.

Q. 3. Do you remember when he farmed Mr. David Cowan's farm?

A. Yes, sir; I do.

Q. 4. In what years was that?

A. In the years 1875 and 1876.

Q. 5. Do you remember anything about Mr. David Cowan's putting in some wooden pipes to convey the water from his spring to his spring-house or milk-house?

A. Yes, sir; I do.

[*This line of examination objected to by Mr. Howson as immaterial and irrelevant.*]

Q. 6. When was that?

A. In the spring of 1875.

Q. 7. About what time in the spring of 1875?

A. In corn-planting time—in May, when he commenced.

Q. 8. Who dug the ditch for Mr. Cowan's pipes?

A. Mr. Webb.

Q. 9. Where did Mr. Webb live at that time?

A. In the tenant-house belonging to Mr. David Cowan.

Q. 10. Were any wooden pipes ever put in on Mr. Cowan's farm after that spring or not, so far as you remember?

A. Not unless—I plowed into the box the following spring, I believe; and, of course, that was repaired; but that was all, to my knowledge.

Q. 11. What crop did you raise on that ground in 1875, and what in 1876?—I mean the ground that the wooden pipe was in.

A. In 1875 corn, and in 1876 oats, and in the fall wheat.

Q. 12. Did you sow the wheat in the fall of 1876?

A. Yes, sir.

[*Entire deposition objected to as immaterial and not in rebuttal, and cross-examination, de bene esse, by Mr. Howson.*]

Cross-Q. 13. Were you living at home all the time till your father left Perry county.

A. Yes, sir; with the exception of one year that I was away at school.

Cross-Q. 14. What year was that, and where were you at school?

A. It was from the summer of 1878 until the spring of 1879, at Williamsport, Pennsylvania.

Cross-Q. 15. Then you were at home at or about corn-planting time in every year from 1875 to 1880, saving the spring of 1879; is that correct?

A. It was in the spring of 1878 that I left, and was gone three months; and then I was at home until September; and then I went back, and was gone four months of the year 1878; I went back the following year in April, and stayed three months, which makes the school year of ten months.

Cross-Q. 16. You were at home and at work on your father's place in corn-planting time of 1875, 1876, and 1877; is that correct?

A. Yes, sir.

Cross-Q. 17. Did you see Mr. Cowan's wood pipe being made?

A. I don't remember seeing it being made, but I saw it after it was made.

Cross-Q. 19. Do you mean by that that you saw it after it was made, and before it was put into the ground?

A. Yes, sir.

Cross-Q. 20. How long did you see it made and ready for putting into the ground before it was put into the ground?

A. I don't remember the time.

Cross-Q. 21. Some little time, wasn't it—probably a week or more?

A. I can't say rightly, but I think it was being made while the trench was being dug, and they put it in shortly after they got it; to my knowledge, it didn't lay very long after they got it.

Cross-Q. 22. Did the lengths of pipe come to Mr. Cowan's place already made, or were they made there on the place?

A. I think they were made in town and brought there in lengths.

Cross-Q. 23. You say you think; do you really know anything about it?

A. I do; they were made in town and brought there.

Cross-Q. 24. Since you know that, tell us where they were made, and when they were made, and when they came to the farm?

A. They were made by Mr. Fisher, and they came in the spring of 1875.

Cross-Q. 25. What month in the spring of 1875 did the pipe come to Mr. Cowan's place?

A. It was in May, about the latter part, to the best of my knowledge; it might vary—might be a little longer than that, but that is the best I can remember.

Cross-Q. 26. Was it before or after you had begun corn-planting?

A. It was afterwards.

Cross-Q. 27. How long were they at the job of laying the pipes?

A. That I can't say; I don't know how long.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 9th day of January, 1884.

FRED. M. OTT,
Examiner.

WILLIAM H. SWARTZ.

DAVID COWENS, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

My age is 69; residence, Rye township, Perry county. My farm adjoins the borough of Marysville; I am a farmer.

Q. 1. How long have you lived there on that farm?

A. Forty-one years.

Q. 2. Do you know George W. Kissinger, who used to live on Thomas Draper's farm in the borough of Marysville?

A. I know him; yes.

Q. 3. How far is that Draper farm from your farm?

A. The buildings are about a quarter of a mile apart; but there is only one field between us that divides us—along the road on one side.

Q. 4. The dwelling-house on the Draper farm is a stone house, is it not?

A. Yes; a stone house.

Q. 5. How long has that house had an observatory on top of it?

A. It was built with that on it in the first place.

Q. 6. Was that observatory afterwards remodeled and rebuilt?

A. Yes, it was rebuilt; they put a roof over it and windows in it.

Q. 7. Do you know Mr. Leonard Swartz, who used to live in that neighborhood?

A. Yes, sir; I know him well.

Q. 8. How was his farm situated with relation to your farm and the Draper farm?

A. It laid right between the two farms—between mine and Draper's.

Q. 9. Did Mr. Swartz ever farm your farm; if so, how long and when?

A. He farmed it in 1875 and 1876—two years.

Q. 10. Did you ever put in on your farm any wooden pipes to convey water from the spring to the milk-house or spring-house; if so, when?

A. I did, yes; I put in pipes in the spring of 1875.

Q. 11. Will you commence and give us an account in your own way of your making and putting in those pipes there—tell us all about it?

A. In the spring of 1875, Kissinger was putting in wooden pipes on the Draper farm—boring wooden pipes. I went down to Kissinger's to see those pipes, and I found that I hadn't the timber for to bore pipes out of on my land; so I went to Fisher, who keeps a planing-mill there, and got him to rip me out some hemlock boards, and I made pipes myself.

Q. 12. When you went down to Kissinger's to see his pipes what did you see there at Kissinger's place?

A. He had drawn some logs together out of the woods, and was about to bore them. He was boring the pipes with one of those pipe-augers that you bore with.

Q. 13. You say that you went down to see Kissinger's pipes; I judge from that that you knew or had heard that Kissinger was having some pipes made or bored at his place, before you started to go down there to see them; am I correct or not?

[*Objected to as leading.*]

A. You are correct.

Q. 14. When and from whom did you first hear anything about Kissinger's having a pipe-auger there at his place, or being about to bore pipes?

(*Same objection.*)

A. Kissinger told me himself some time before that. He told me that he was getting the auger. He said I could get it and bore mine, too, if I wanted it.

Q. 15. Do you remember whose auger it was that he said he was getting?

A. Keller's.

Q. 16. About what month do you think it was that he told you that?

[*Objected to as inquiring for guess-work—not evidence.*]

A. I think it was about the fore part of March — some time in March, 1875.

Q. 17. You state that you made your pipes out of hemlock boards; tell us how the boards were sawed, and how you put pipes together.

[*Objected to as immaterial and irrelevant.*]

A. They were sawed wedging pointed, broad and narrow; and then we nailed them together and put a ring around the broad end to keep it from bursting; and then we drove the narrow end of one section into the broad end of another section, and so put them together.

Q. 18. Who nailed those pipe-boards together to make the pipe sections, and where was that work done?

A. I nailed them together myself at home.

Q. 19. Who dug the ditch in which the pipe was laid between your spring and the spring-house or milk-house?

A. In the first place, Leonard Swartz was plowing for corn there, and he plowed it open for us; and then I had a man hired there who lived in my tenant-house, he dug it out and shoveled it out; I helped him some.

Q. 20. What was that man's name?

A. David Webb.

Q. 21. Which work was commenced first—the digging of the ditch or the nailing of the pipe-boards together to make the pipes?

A. The pipe was all made before we began the ditch.

Q. 22. Did you keep a book account with Mr. David Webb while he lived on your farm, or not?

A. I did. I kept a book account.

Q. 23. Have you that original book here in which that account was kept—containing the original book entries?

A. I have.

Q. 24. Will you please produce it, and exhibit the account with Mr. Webb, in order that it may be copied on to the record by the examiner?

A. This is the book.

[*Witness produces book.*]

Q. 25. In whose handwriting are these entries in the book relating to Mr. Webb?

A. In my own handwriting.

Q. 26. When were these entries in Webb's account written in the book?

A. They were written in the book at the time he done the work. The dates are there.

Q. 27. In whose possession has that book been from that time to the present?

A. In my possession.

[*Respondents' counsel requests the examiner to copy from the book the entire account with David Webb, with and as a portion of, this deposition.*

The account is as follows:

"*David Webb, Debtor.*

To blacksmithing done at cart	$1 50
1874 April the 15 to moving	1 00
May the 15 to rent due	5 00
June the 15 to rent due	5 00
July the 15 to rent due	5 00
August the 15 to rent due	5 00
August the 22 by cash	2 00
August the 27 by four dozen corn	40
September the 15 to rent due	5 00
the 18 by cash	10 00
October the 15 to rent due	5 00
November the 15 to rent due	5 00
the December the 15 to rent due	5 00
January the 13 to 76 pounds of beef 8 cts per pound	6 08
1875 January the 15 to rent due	5 00
February the 15 to rent due	5 00
March the 15 to rent due	5 00
Aprile the 15 to rent due	5 00
	$80 98
	63 64
	17 34
May the 21 to potatoes	50
May the 15 to rent due	5 00
June the 15 to rent due	5 00
July the 15 to rent due	5 00
August the 15 to rent due	5 00
September the 15 to rent due	5 00
October the 15 to rent due	5 00
November the 15 to rent due	5 00

David Webb, Credit.

May the 9, 1874, to 5 days making fence	5 00
June the 23 to 3 days mowing	4 50
June the 27 2 days making fence	2 00
July the 4 to 5 1–2 days harvesting	8 25
July the 8 to 3 days harvesting	4 50
July the 17 to 1–2 day plowing corn	75
August the 29 to one day cuting elders	75
To one hundred and 96 panel of fence made	29 40
November the 4 to 1 1–2 days hauling corn fother	1 12½
December the 4 to 3 1–2 days thrashing	2 62
the 5 3–4 day holing stone	56
the 7 to 1 day holing stone	75
the 10 to one day holing stone	75
the 11 to 1–2 day holing stone	37
the 12 to 1 day " "	75
the 14 to 1–2 day	37
January the 12 1875 to 1 day butchering	1 00
	63 64

May the 8, 75 to 5 days ditching	3 75
May the 10 to 1 day ditching	75
May 26 to 1–2 day ditching	38
May the 27 to 1 day ditching	75
July the 19 by cash	5 00
1875 July the 23 to 1–2 day	37½
to one pare of pants made	50
August the 1 to one day hauling lime	75
the 3 to one day hauling lime	75
Sep the 7 to 5 hours ditching	60
Sep the 14 to 2 days one hour scattering lime	2 50
Sep the 23 to one day cuting corn	1 20
the 24 3–4 of day cuting corn	90
the 25 to 1–2 day cuting corn	60
Sep the 27 to 1 day cuting corn	1 20
to ditching in the run—1 day	1 20
	21 22

October the 12—1875 D. Web, credet, to one day digging out locust trees	1 20
the 13 to 1– 12 day diging potatoes	1 12
the 14 to 1–2 days diging potatoes	1 12
the boys	50
	3 94

November the 13 to 83 pannels of fence at 53 cents a pannel

12	45
16	39
21	22
37	61"]

Q. 28. I notice that one of the first two items in your account with Mr. Webb is dated April 15th, 1874, "to moving." What does that item relate to?

A. When he moved I hauled him from where he lived to my house.

Q. 29. And was that the time—April 15th, 1874—that he moved into your tenant-house?

A. That was the time.

Q. 30. I notice that the account shows rent charged to him for every month during the year 1874 after he moved into your tenant-house, and for every month from the beginning of 1875 until November 15, 1875. When did Mr. Webb move away from your place?

A. He moved away about the time the rent stopped—within a few days; I just charged him the full month's rent. Likely he was a few days longer in.

Q. 31. Did Mr. Webb ever live on your farm, or do any work for you after the time when he moved away in November, 1875; if so, when?

A. No; he never done nothing after that time, and has never moved back there since.

Q. 32. In this account in your book I notice four entries, as follows:

"May the 8 —75 to 5 days ditching	3,75
May the 10 to 1 day ditching	75
May the 26 to ½ day ditching	38
May the 27 to 1 day ditching	75"

What ditching do those entries relate to?

A. The digging of the ditch for that spout or pipe that I put in.

Q. 33. That wooden pipe that you have been testifying about, or some other pipe?

[*Objected to as leading.*]

A. The wooden pipe from the spring to the spring-house.

Q. 34. I also notice in Mr. Webb's account another entry, as follows:

"Sep the 7 to 5 hours ditching . . . . . 60"

And below it, just after an entry of September 27, the following:

"To ditching in the run, one day . . . . . 1,20"

What ditching do those two entries relate to?

A. Straightening up the run where it had gone crooked down through the field.

Q. 35. Did those last two entries have anything to do with the wooden pipes or not?

A. No; they had nothing to do with it.

Adjourned until January 10th, 1884, at 10, A. M.

January 10, 1884.

Examination resumed pursuant to adjournment.

Present, same counsel.

Examination of David Cowan by Mr. Hill continued:

Q. 36. You have informed us that in the spring of 1875 you put in some wooden pipes on your farm to convey water from the spring to the milk-house; I wish to know whether you ever put in any other wooden pipes on your farm after that time or not.

A. I never did.

Q. 37. Are you acquainted with Daniel Drawbaugh, of Eberly's Mills or Milltown, Cumberland county?

A. I have never been much acquainted with him; I merely know him when I see him.

Q. 38. When and where did you first make his acquaintance?

[*Objected to as assuming.*]

A. Down at Milltown; I was down with Kissinger; that was the first. I might have seen him before that, but I never knew him till me and Kissinger went there; that was in the spring of 1876.

Q. 39. Was it before or after the beginning of the Centennial Exposition at Philadelphia?

[*Objected to as incompetent.*]

A. I think it was before—in the spring—some time in the forepart of May.

Q. 40. Were you in Mr. Drawbaugh's shop at that time or not?

A. I was in the shop, yes.

Q. 41. How many times were you ever in Mr. Drawbaugh's shop in your life?

A. I was never in that shop before nor since.

Q. 42. Where did you and Mr. Kissinger start from to go to Milltown, and by what kind of a conveyance did you go?

A. We started from my place up there at Marysville; we took my spring wagon and horse.

Q. 43. Did you go down to Milltown at Mr. Kissinger's request; or did he go down at yours?

A. I went at his request.

Q. 44. What did he go down there for on that occasion?

A. He wanted to see Drawbaugh about this ram that he was putting in—see whether he was soon going to put it in.

Q. 45. What, if anything, did Mr. Kissinger say to you at that time about Drawbaugh's putting the ram in?

[*Objected to as incompetent.*]

A. He said he had promised to come up there and put it in, and it hadn't come, and he wanted to go down there, if I would go with him, to see when he would put it in; that he wanted it in.

Q. 46. Was Mr. Kissinger with you in Mr. Drawbaugh's shop on that occasion?

A. Yes; he was along.

Q. 47. While you and Mr. Kissinger were there in Mr. Drawbaugh's shop at that time, what, if any, conversation do you remember between Mr. Kissinger and Mr. Drawbaugh on the subject of the ram?

[*Same objection.*]

A. I didn't hear much said; I was around looking through the shop. They were talking, and when we went to leave Drawbaugh said that he would try to bring it up as soon as he could; that he was busy and had some little fixing yet to do at it.

Q. 48. Did you form any opinion at the time as to whether Mr. Drawbaugh was very anxious to furnish the ram to Mr. Kissinger or not?

[*Objected to as incompetent, and as calling for mere inference on the part of the witness, and not any matter of fact.*]

A. I did have the opinion that he didn't care very much about the ram—whether he furnished it or not.

Q. 49. Did you form any opinion as to the reason why he did not care about furnishing the ram? If so, what?

[*Same objection.*]

A. I was of the opinion that Drawbaugh was fearful about his pay. I supposed he knew Kissinger as well as I did.

Q. 50. What was Kissinger's reputation as to the matter of promptness in paying his debts and attending to his business matters?

[*Objected to as incompetent, and because no sufficient basis has been laid for the question.*]

A. He was very slow. He was poor and slow in paying.

Q. 51. What kind of a man was he in regard to any work that he had to do, or business that he had on hand; was he active and prompt, or slow and procrastinating, or what?

[*Same objection.*]

A. Very slow and dilatory.

Q. 52. When you and Mr. Kissinger were there at Mr. Drawbaugh's shop together in the spring of 1876, what, if any, inventions and machines of Mr. Drawbaugh did you see there in his shop?

[*Objected to as new matter, not rebuttal.*]

A. I saw an old big clock that he had there—an old big clock that he was trying to make go without winding—and I saw this other machine—this talking-machine. I don't know what he called it—this thing that you spoke to, and spoke through. He had that there, too.

Q. 53. How is it that your attention was first directed to his talking-machine while you were there that day?

[*Objection continued.*]

A. He was showing it to Kissinger and me and telling us what it was for.

Q. 54. Do you remember who first talked to you there that day about the talking-machine? If so, who?

[*Same objection.*]

A. Mr. Kissinger told Drawbaugh that he wanted me to see it, or wanted me and him to see it, or something of that kind.

Q. 55. Did Mr. Drawbaugh do any talking through the talking-machine for you that day or not?

[*Same objection, and also objected to as leading.*]

A. He talked through it, yes.

Q. 56. Who listened while he talked through the machine?

[*Objected to as not rebuttal and as assuming.*]

A. Kissinger listened first; and then I listened to it.

Q. 57. While Mr. Drawbaugh was talking through the machine, and you were listening at it, did you hear and understand through the machine what he was saying into it or not?

[*Objected to as leading.*]

A. You could understand it; yes.

Q. 58. While Mr. Drawbaugh was talking into the machine, and you were listening at it, were you and Mr. Drawbaugh in the same room or in different rooms?

A. Mr. Drawbaugh was in a different room.

Q. 59. You have stated that this was before the beginning of the Centennial Exposition at Philadelphia; was anything said there that day in Mr. Drawbaugh's shop about the Centennial Exposition, or any mention made of it or not?

[*Objected to because the witness has not positively made the statement which the question attributes to him.*]

A. Mr. Drawbaugh said he wanted to get—I think it was the clock he wanted to take there—but he was going to get it ready and take it down there that fall.

Q. 60. I suppose you know that Mr. Kissinger did have a hydraulic ram put in on the Draper farm at one time, do you not?

A. I know it; I saw it working.

Q. 61. Are you able to fix the date when he put that ram in?

A. I ain't certain; I think that it was in the fall of 1876; I think it was late that fall, but I wouldn't be real certain about it.

Cross-examined by ***Mr. Howson:***

Cross-Q. 62. How much wooden piping, or how many lengths, did you make out of the lumber you obtained from Mr. Fisher?

A. I made—I don't know how many lengths—I didn't count them; I had about three hundred feet of pipe; I measured, and then I got the boards sawed to suit the length of pipes; I got the boards from Mr. Fisher; he keeps lumber.

Cross-Q. 63. I understand that you, yourself, nailed the boards together to make the quantity of pipe required; is that correct?

A. That is correct; I done it myself.

Cross-Q. 64. Tell us, as nearly as you can, how long you were at that job—I mean making the pipe out of the boards?

A. I couldn't tell exactly; I done it between March and sometime in May, when we put the pipe in; I got it accomplished, and had it all ready before we opened the ditch.

Cross-Q. 65. As I understand you then, you had the wooden pipe finished and ready some little time before you began to open the ditch; is that correct?

A. That is correct.

Cross-Q. 66. Did Mr. Fisher deliver the lumber to you on the same day you ordered it; or did some little time intervene between the order and the delivery?

A. He didn't deliver it at all; I went to the mill and fetched it myself; I don't know what time intervened, but not long; he done it as quick as he could.

Cross-Q. 67. But if I understand you, you went to his mill on one day to order the lumber, and went again on a later day to get it—is that correct?

A. That is correct.

Cross-Q. 68. Fix, as nearly as your memory will allow, the date at which you ordered that lumber from Mr. Fisher.

A. I could hardly tell that. It might have been the early part of April or latter part of March—somewhere along there. I had all April to work at it after it was sawed.

Cross-Q. 69. You have described the way in which you made the wooden pipe from this lumber. Had you, at any time before that, made similar wood pipes?

A. No; I hadn't made none before that. I figured that out myself.

Cross-Q. 70. About how long before you went to Fisher's to order the lumber was it that you paid the visit to Mr. Kissinger, which you have testified about?

A. It was some time in March that I seen Kissinger when he was boring at the pipes. I went to see how it would work—how they would suit me. It was sometime in March; the weather was pretty rough yet. I couldn't tell exactly the day. I didn't keep no account of it, but it was in March sometime.

Cross-Q. 71. And, if I understand you correctly, it was some time before that, that Mr. Kissinger spoke to you about the auger and boring pipes, and so forth?

A. Yes; it was some time before—shortly, too. I don't recollect the time exactly, but it was some time in March that he told me had got the auger, and that I went to see him.

Cross-Q. 72. Who occupied your tenant-house in 1876 and 1877, if any one?

[*Objected to as irrelevant and immaterial.*]

A. In 1875, Dave Webb occupied it—till in the fall of 1876; he moved out late in the fall. A man by the name of Andrew Lilly moved in in the spring of 1877. It stood idle all winter.

Cross-Q. 73. How long did Mr. Lilly continue to live there?

A. I think he was there two years.

Cross-Q. 74. Did he do any work for you during that time?

A. He did work some; yes.

Cross-Q. 75. Mr. Lilly's account doesn't appear in the book which you have produced?

A. No; it is not in that book; I think it is in a smaller book at home. About the time Webb left I think I stopped using that book.

Cross-Q. 76. What was the depth and the width of the trench prepared for the wooden pipe leading from your spring to your milk-house?

A. I didn't particularly measure it; we just made it so that we could conveniently work in it and shovel—may be about fifteen inches wide, and, as to depth—the ground was uneven—in some places three feet, and in some places two or not so much.

Cross-Q. 77. How long, according to your present recollection, did it take to prepare the trench?

A. I think we were something like five or six days at it—me and Webb. We plowed it up first as deep as we could throw it up with a plow and two horses, and then we dug the balance.

Cross-Q. 78. At the time this ditch was dug, and the pipe was put in, had you any farm hand in your employ besides this Mr. Webb; and if yes, who?

A. I had nobody but Mr. Webb and the children. I had my boy, about fourteen years old; he helped; and I helped him—I worked at it, too.

Cross-Q. 79. I understand you to testify that you are still living on that same farm where the wood pipe was put in, and that you have lived continually on that same farm for about forty years last past; is that correct?

A. Yes; with the exception of a few—three years, I think—that I had rented it, and was off of it. One man was two years on it, and another one.

Cross-Q. 80. What years were those that you were not living on the farm?

A. Year before last I was not on it—1882; I was living in Marysville. I can't tell the others; it must be twelve years ago, I think.

Re-direct by Mr. Hill:

Q. Q. 81. There is a little discrepancy in your testimony as to the time when Mr. Webb moved away from your farm. In your examination-in-chief you testified that he moved away in the fall of 1875; and you produced your rent account with him, showing the last charge for rent to be November 15, 1875. In your cross-examination you stated that he moved away in the fall of 1876. Which of these two dates is correct, and when did he move away from the farm?

A. He moved away in the fall of 1875; I made a mistake, as I didn't understand very clearly, I guess. It was 1874 and 1875 that he lived there.

Q. Q. 82. When he moved away did he move away late in the fall of the year or not?

A. Late in the fall.

Re-cross by Mr. Howson:

Re-cross-Q. 83. At whose request did you attend here to testify?

A. At Oliver Miller's, the constable, of Marysville. He summoned me here.

Re-cross-Q. 84. Who issued the summons, if you know?

A. I don't know that.

Re-cross-Q. 85. Did you have any talk before that as to the matters you have testified about here; and if so, with whom?

A. 'Squire Fenn talked to me about it some time ago; I don't know exactly when. He lives up in Marysville, and he was talking to me about it back and forward for quite a while.

Re-cross-Q. 86. The 'Squire Fenn you name is the gentleman who was sitting in the room here last evening for an hour or two while you were being examined, is he not?

A. Yes, sir; that is the man.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 10th day of January, 1884.

FRED. M. OTT,
Examiner.

DAVID COWENS.

Mrs. CATHARINE A. WEBB, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

I am the wife of David Webb, of Silver Spring township, Cumberland county, Penna.

Q. 1. What is the name of your youngest son?

A. James Calvin Webb.

Q. 2. When was he born?

A. In 1876—September the 24th.

Q. 3. Where were you living at the time when that child was born?

A. At Silver Spring, Cumberland county.

Q. 4. Where did you live last before you moved to Silver Spring Cumberland county?

A. In Fishing Creek valley, Perry county, near Marysville.

Q. 5. On whose place?

A. Mr. Cowan's.

Q. 6. How long did you live on Mr. Cowan's place?

A. A year and a half—near.

Q. 7. Do you remember what time of the year it was when you moved away from Mr. Cowan's place to Silver Spring township?

A. November.

Q. 8. How long did you move away from Mr. Cowan's place before your child, James Calvin Webb, was born?

A. Nearly a year—not quite a year.

Q. 9. Who farmed Mr. Cowan's farm the first year, and who the second year that you lived on it?

A. Mr. Cowan himself the first year, and Mr. Swartz the second.

Q. 10. While you lived on Mr. Cowan's farm, do you remember anything about any pipes being put in to convey the water from the spring to the spring-house or milk-house?

A. Yes, sir.

Q. 11. Was that the first year or second year that you lived there?

A. The second year.

Q. 11½. About what time of the year was it?

A. In the spring.

Q. 12. Do you know who dug the ditch in which those pipes were laid?

A. My husband.

Q. 13. Do you know what crop was raised in that field in which the pipes were laid that same year?

A. Corn.

Q. 14. Did you have anything to do with raising that corn? If so, what?

A. I helped to hoe some of it.

Q. 15. While you lived there on the Cowan farm, were you ever down on the Draper farm where Mr. George W. Kissinger lived? If so, how many times?

A. Yes, sir; once.

Q. 16. Do you remember in which year that once was—whether it was in the first or the second year that you lived there?

A. The first.

Q. 17. Do you remember anything about Mr. Kissinger's having any wooden pipes bored, or any hydraulic ram put in on the Draper farm?

[*Objected to as leading.*]

A. No, sir.

Q. 18. Where did you live just before you moved into Mr. Cowan's tenement-house?

A. At Marysville.

Q. 19. How long did you live there before you moved into Mr. Cowan's house?

A. About four weeks.

Q. 20. Tell us where that house stood that you lived in those four weeks.

A. On the top of the hill on the Fishing Creek valley road; it was Mr. Draper's house—the same man who owned the farm where Kissinger lived.

Q. 21. It was not the house that Mr. Kissinger lived in, was it?

A. No, sir.

Q. 22. Where did you live last before you lived in that house those four weeks?

A. At Cove Station.

Q. 23. That place is on the Susquehanna river several miles above Marysville, is it not?

A. Yes, sir.

Q. 24. Have you ever lived on Mr. Cowan's farm, or anywhere else around there in that neighborhood, since you moved, in November, 1875?

A. No, sir.

[*Deposition objected to as not rebuttal, and immaterial, and as importing into the case remote and irrelevant issues, and cross-examination declined by Mr. Howson.*]

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 10th day of January, 1884.

FRED. M. OTT,
Examiner.

CATHARINE A. WEBB.

DAVID WEBB, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

My age is 47; I reside in Silver Spring township, Cumberland county, Pennsylvania; I am a laborer.

Q. 1. Are you the David Webb who formerly lived, at one time, on Mr. David Cowan's farm, right back of Marysville, Perry county?

A. Yes, sir.

Q. 2. How long did you live on Mr. Cowan's farm?

A. A year and a half, or a little over.

Q. 3. Do you remember when you first moved on to Mr. Cowan's farm?

A. In 1874.

Q. 4. In what month, if you remember?

A. In April.

Q. 5. In what month did you move away from Mr. Cowan's farm?

A. I don't just remember.

Q. 6. Do you remember what was the last work you did on Mr. Cowan's farm before you moved away?

A. Raising potatoes.

Q. 7. I suppose you mean raising them out of the ground—digging them, do you?

A. Yes, sir.

Q. 8. Where were you living when your child, James Calvin Webb, was born?

A. In Cumberland county.

Q. 9. How long had you been living in Cumberland county before that child was born?

A. Very nearly a year.

Q. 10. Who farmed Mr. David Cowan's farm the two summers that you were there?

A. Mr. Cowan farmed it the first summer, and Mr. Swartz the second.

Q. 11. There is a spring on that farm, I believe, that supplies the water that is used there, is there not?

A. Yes, sir.

Q. 12. While you lived there on that farm was any work done in connection with that spring or not?

A. Yes, sir.

Q. 13. What was that work?

A. Some ditching.

Q. 14. What was that ditching for?

A. To draw the water to the house.

Q. 15. Who dug that ditch?

A. I dug it, sir.

Q. 16. After you dug the ditch was anything put into it?

A. There was spouting put into it.

Q. 17. At what season of the year was that ditch dug?

A. In the spring.

Q. 18. In the first or second spring that you lived there?

A. The second.

Q. 19. That field, where the ditch was—what crop was raised on that field the first summer that you were there, and what the second?

A. There was hay raised on it the first summer, and corn the second.

Q. 20. Have you ever been at Mr. Cowan's place since you moved away from there?

A. No, sir.

Q. 21. Where did you live just before you moved into Mr. Cowan's house?

A. On the hill at Marysville.

Q. 22. How long?

A. About four weeks.

Q. 23. While you lived on Mr. Cowan's farm, were you ever down at Mr. George W. Kissinger's place, on the Draper farm; if so, how often?

A. Once or twice—I can't just remember which.

Q. 24. In the summer or in the winter?

A. I was there in the winter.

Q. 25. While you lived there on Mr. Cowan's place, do you remem-

ber anything about Mr. Kissinger's getting a hydraulic ram, or boring any wooden pipes?

A. No, sir.

Q. 26. While you lived there on Mr. Cowan's place, did you know a family by the name of Meals?

A. Yes, sir.

Q. 27. Where did they live?

A. On the hill at Marysville.

Q. 28. The same hill that you lived on those four weeks, just before you went to Cowan's place?

A. Yes, sir.

Q. 29. Do you know when they moved there on to that hill?

A. In 1875.

Q. 30. At what time in 1875?

A. In the spring.

Q. 31. How far was the house that they moved into in the spring from the house that you lived in the four weeks?

A. Just across the road.

Q. 32. Were both of those houses on the corner of the Draper farm next to Marysville?

A. Yes, sir; one was across the road from it.

Q. 33. How far were those two houses from the dwelling-house that George Kissinger lived in on the Draper farm?

A. I couldn't tell how far.

Q. 34. Were there any houses between them and the dwelling-house that Kissinger lived in?

A. No, sir.

Q. 35. As you went up the valley road from Marysville village you would come to those two houses on top of the hill, and, passing along up the road, the next house would be Kissinger's, the next Swartz's, and the next Cowan's; is that correct?

A. Yes, sir.

[*Same objections as to the last preceding deposition, and cross-examination, de bene esse, by Mr. Howson.*]

Cross-Q. 36. When did you become acquainted with this Meals family?

A. Through the summer of 1875.

Cross-Q. 37. Were they living in the house you have described when you left Cowan's place?

A. Yes, sir.

Cross-Q. 38. Were you accustomed to visit this Meals family?

A. No, sir.

Cross-Q. 39. About how far from Mr. Kissinger's house was the tenant-house that you occupied on the Cowan place?

A. Something over a quarter of a mile.

Cross-Q. 40. Were the two houses within easy sight from each other?

A. No, sir.

Cross-Q. 41. Did a part of the Cowan farm adjoin a part of the Draper or Kissinger farm?

A. Not that I remember.

Cross-Q. 42. How far was the one farm from the other at the point where they came nearest to joining?

A. There was a small field in between.

Cross-Q. 43. What part of the Draper farm was in sight from the Cowan place across this small field?

A. The mountain part of it, as far as I can tell.

Cross-Q. 44. Was there any part of the Cowan farm from which the house which Mr. Kissinger lived in, and the barn on his farm, and the ground lying between the two, could be easily seen?

[*Objected to as immaterial.*]

A. No; you couldn't see much of that.

Cross-Q. 45. How far from the Kissinger house or the barn was the Cowan farm at its nearest point?

A. Indeed, I couldn't tell that.

Cross-Q. 46. You were present in the room, were you not, while your wife was giving her deposition?

A. Yes, sir.

[*Defendants' counsel states that the witness was present at his, the said counsel's, invitation, merely as company for his wife in a strange place and among strangers.*]

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, (by making his mark,) this 10th day of January, 1884.

his
DAVID × WEBB.
mark.

FRED. M. OTT,
Examiner.

Adjourned until January 11, 1884, at ten, A. M.

January 11, 1884, at 10, A. M.

Examination resumed.

Present, same counsel.

JOHN W. COWEN, *being produced, sworn, and examined, saith:*

Examined by Mr Hill:

My age is twenty-three. I reside about a mile above Marysville, Perry county, Pennsylvania. I am a farmer.

Q. 1. What is your father's name, and where does he live?

A. My father's name is David Cowen, and he lives about a mile above Marysville.

Q. 2. Is he the same David Cowen who testified here as a witness in this case the day before yesterday and yesterday?

A. Yes, sir.

Q. 3. Do you know Mr. Leonard Swartz, who used to live on the farm between your father's farm and Mr. Draper's farm?

A. Yes, sir.

Q. 4. Did Mr. Swartz ever farm your father's farm?

A. Yes, sir.

Q. 5. How many years did he farm it?

A. Two years.

Q. 6. What years were they?

A. 1875 and 1876.

Q. 7. How many horses did your father keep on his farm while Mr. Swartz farmed it?

A. One.

Q. 8. What kind of a horse was that?

A. A young bay mare.

Q. 9. Do you remember how many horses he kept before Mr. Swartz took the farm?

A. Three.

Q. 10. Just before Mr. Swartz took the farm, did your father have a sale of his stock?

A. Yes, sir.

Q. 11. Do you remember in what month that sale was?

A. In March.

Q. 12. When your father took the farm again, after Mr. Swartz was done with it, how many horses did your father keep?

A. After he took the farm again, two.

Q. 13. Do you remember anything about your father's putting in some wooden pipes, made out of boards, to convey the water from the spring to his milk-house, or spring-house?

A. Yes, sir.

Q. 14. Who was farming your father's farm at that time?

A. Me and my sister——

Q. 15. I mean at the time the wooden pipes were put in.

A. Mr. Swartz. I misunderstood the question—Mr. Swartz was farming then.

Q. 16. Who dug the ditch for those wooden pipes which were put in on your father's farm?

A. Mr. Webb.

Q. 17. Do you remember what crop was grown in that field in which those pipes were put in that year that the pipes were laid on your father's farm?

A. Corn.

Q. 18. Did you know Mr. George W. Kissinger, who lived on the Draper farm in the borough of Marysville?

A. Yes, sir; I did.

Q. 19. Did you know anything about his having a hydraulic ram put in on the Draper farm to force the water up from his spring to his dwelling-house?

A. Yes, sir; I did.

Q. 20. Were you at Mr. Kissinger's place at any time when any work was going on connected with the putting in of the pipes or the digging of the trench, or anything else connected with the putting in of the ram?

[*Objected to as leading.*]

A. Yes, sir; I was.

Q. 21. How happened you to be there on Mr. Kissinger's farm at that time?

A. I was there plowing.

Q. 22. Plowing for whom?

A. Mr. Kissinger.

Q. 23. Plowing on what part of the farm?

A. On the north-east part, near the cemetery.

Q. 24. How many days did you plow there that time?

A. Two days and a half.

Q. 25. Whose team did you have for doing that plowing?

A. One of Mr. Kissinger's horses and my father's horse.

Q. 26. At what season of the year did you do that plowing? In what month of the year was it, if you remember?

A. In the month of September.

Q. 27. What crop was the ground plowed for?

A. For a wheat crop.

Q. 28. In what year was it that you did that plowing on Mr. Kissinger's farm?

A. The year 1876.

Q. 29. Where did you get your meals while you were doing that plowing on Mr. Kissinger's farm, and where did you feed and water the horses that you used in plowing?

A. I got my meals at Mr. Kissinger's house, and I watered my horses right below the spring-house—right below the spring; I fed them at Mr. Kissinger's.

Q. 30. You have stated that while you were there doing that plowing, some work was going on there connected with the putting in of a ram; what work was that?

[*Objected to as assuming and leading.*]

A. Laying of the pipes—wooden pipes.

Q. 31. Describe to us what, if anything, you saw there at that time with relation to the laying of the wooden pipes.

A. I saw, when I came up to dinner, part of the pipes laid.

Q. 32. Did you see any part of the wooden pipes that were not laid at the time or not?

[*Objected to as leading.*]

A. Yes, sir; I saw part of them that were not laid.

Q. 33. Where were the wooden pipes laid—I mean those that you saw laid at that time?

A. From the spring down towards the ram.

Q. 34. Was the dirt covered in over them or not?

[*Objected to as a leading and improper mode of inquiry.*]

A. Partly covered—where I took the horses.

Q. 35. You say you saw a portion of the wooden pipes there that had not been laid at that time; where had those pipes been lying?

A. Lying along the ditch—from where I crossed with the horses down towards the ram.

Q. 36. Were you at the Centennial Exposition at Philadelphia in the year 1876?

[*Objected to as immaterial and irrelevant.*]

A. Yes, sir.

Q. 37. How many times were you at the Centennial Exposition?

[*Same objection.*]

A. Once.

Q. 38. How long was that visit that you made to the Centennial Exposition before the closing of the Exposition on November 10, 1876?

A. Four days.

Q. 39. Was that visit to the Centennial Exposition, before or after you did the plowing for Mr. Kissinger, and saw the wooden pipes partly laid and partly not laid?

[*Objected to as leading and incompetent.*]

A. Afterward.

Q. 40. Between the time when you did the plowing for Mr. Kissinger, and saw the wooden pipes partly laid, and partly not laid, and the time when you went to the Centennial Exposition, do you remember of being at Mr. Kissinger's place or not?

[*Objected to as leading.*]

A. I do not.

Q. 41. Were you at Mr. Kissinger's place at any time after you returned from the Centennial Exposition or not?

A. I was.

Q. 42. How soon after your return from the Centennial Exposition were you there at Mr. Kissinger's place for the first time?

A. Within a week.

Q. 43. When you were there at Kissinger's place again within a week after your return from the Centennial Exposition, did you see anything relating to the hydraulic ram in any way; if so, what?

A. I saw the water running out of the pipes.

Q. 44. Tell us where the water was running, and what kind of a pipe you saw it running out of at that time.

A. It was running up to the house—very close to the house—out of an iron pipe.

Q. 45. Describe the appearance of the iron pipe that the water was running out of at that time.

A. The iron pipe that the water was running out of at that time was an old pipe about an inch in diameter.

Q. 46. How high was the end of it above the ground, so far as you remember?

[*Objected to because it does not appear that the witness has any means of accurate information upon the subject.*]

A. Between two and three feet.

Q. 47. What was the shape of this upper end of the pipe that you saw the water running out of at that time?

A. Round.

Q. 48. I mean was it straight, or curved over, or what?

A. It was curved a little.

Q. 49. Did you ever, at any time, see anybody conveying or hauling pipe of any kind on to the Draper farm or not?

A. I did.

Q. 50. What kind of pipe?

A. Iron pipe.

Q. 51. Who was it that you saw hauling iron pipe on to the Draper farm?

A. Mr. Zimmerman.

Q. 52. What relation, if any, was that Mr. Zimmerman to Mr. George W. Kissinger?

A. A son-in-law.

Q. 53. Where did you see him hauling that iron pipe, and how happened you to see him?

A. I saw him as I was going to Marysville, hauling the iron pipe in from the road to the house.

Q. 54. What kind of a conveyance did he have to haul the iron pipe in?

A. A two-horse team and a large wagon.

Q. 55. Do you remember what was the size of the pipe that you saw him hauling—so far as you could judge by the eye?

[*Objected to as calling for guess-work, not evidence.*]

A. Inch, I should judge.

Q. 56. Do you mean an inch in the entire diameter, or an inch bore?

A. An inch in the entire diameter.

Q. 57. Did the pipe which you saw him hauling look like new or old pipe?

[*Same objection.*]

A. New pipe.

Q. 58. In what year was it that you saw Mr. Zimmerman hauling that new pipe from the road into Mr. Kissinger's place?

A. In the year 1878.

Q. 59. About what time of year was it, as near as you can remember?

[*This line of examination objected to as not rebuttal.*]

A. In the fall of the year.

Q. 60. At the time when you saw Mr. Zimmerman hauling that iron pipe from the road into Mr. Kissinger's place in the fall of 1878, had you, or had you not, any idea or opinion as to what use was to be made of that iron pipe which you saw Mr. Zimmerman hauling there?

[*Objected to as incompetent.*]

A. I had.

Q. 61. What use did you believe or understand, at that time, was to be made of it?

[*Same objection, and as immaterial.*]

A. I believed it was to be used to carry the water from the ram up to the house.

Q. 62. Will you tell us what gave you that idea, or made you think so?

[*Objections continued.*]

A. Because I knew they had the ram in there for that purpose.

Q. 63. If I understand your testimony correctly, they had the ram in there for that purpose as early as the fall of 1876, when you saw the water running out of the pipe up by the house. Why did they want to get new pipe for it in the fall of 1878?

[*Objected to as leading, as assuming the witness to have stated what he has not stated, as putting statements into his mouth, and as incompetent.*]

A. Because the pipe that they had in bursted.

Q. 64. Did you ever hear any one say anything about its bursting before you saw Zimmerman hauling those new pipes in there? If so, whom did you hear saying anything about it?

[*Objected to as leading, and inquiring for hearsay.*]

A. I did not.

Q. 65. How did you know that the pipes had bursted?

A. They told me so afterwards.

Q. 66. Who told you so?

[*Objected to as inquiring for hearsay.*]

A. Mr. Kissinger.

Q. 67. How long after you saw Mr. Zimmerman hauling the pipes up there did Mr. Kissinger tell you that?

A. I can't tell you.

Q. 68. Where was Mr. Kissinger living when he told you that?

A. He was living there on the farm.

Q. 69. Can you tell me whether it was a long time or a short time after you saw Mr. Zimmerman hauling the pipes there that Mr. Kissinger told you that?

[*Objected to, the witness having already stated that he cannot tell how long.*

Respondents' counsel replies that the question does not ask the witness to state how long it was, but whether it was a short time or a long time.

Complainants' counsel says that that is the very ground of his objection to the question; that it asks the witness, after he has already stated that he cannot tell how long it was, to guess whether it was a long time or a short time.

Respondents' counsel replies that he asks the witness to guess at nothing at all, but merely asks his recollection as to whether it was a long or a short time.

Question further objected to by complainants' counsel because the witness's recollection on the subject has already been exhausted].

A. No, sir; I could not.

Recess until 2, P. M.

Q. 70. Can you tell me what season of the year it was when Mr. Kissinger told you that?

[*Objections renewed.*]

A. It was in the winter.

Q. 71. Where did he tell you that?

A. At my father's house.

Q. 72. When you were at Mr. Kissinger's place plowing, in September, 1876, and saw the wooden pipes there, partly laid and partly not laid, do you remember whether you saw any iron pipes there at that time or not?

[*Objected to as leading.*]

A. I do not.

Cross-examined by Mr. Howson:

Cross-Q. 73. Are you now living with your father?

A. Yes, sir; I am.

Cross-Q. 74. And have you been living with him continually since 1875?

A. No, sir; I was eleven months away from home between that and this.

Cross-Q. 75. When was that?

A. Four years ago.

Cross-Q. 76. That was in 1879, then, was it?

A. I was nineteen when I was away.

Cross-Q. 77. Was it during the year 1879 that you were away?

A. Yes, sir; it was; I went away in that year and came back in that year.

Cross-Q. 78. What month did you go away in?

A. I went away in January.

Cross-Q. 79. From 1875, to January, 1879, were you at home all the time with the exception of the visit you made to the Centennial, which you have mentioned?

A. I was.

Cross-Q. 80. What time in the month of September was it that you were two days and a half plowing for Mr. Kissinger?

A. I can't tell you.

Cross-Q. 81. Was it early in the month or late in the month?

A. I couldn't tell you.

Cross-Q. 82. Did anybody help you at the job, or during any part of it; and if yes, who?

A. Mr. Kissinger helped me part of the time.

Cross-Q. 83. How much of the time did Mr. Kissinger help you?

A. I could not tell.

Cross-Q. 84. Was it during the greater or the lesser part of the entire two days and a half?

[*Respondents' counsel states that he now takes the opportunity of interposing the same objection to this question that complaintants' counsel interposed to question* 69.]

A. I couldn't tell you, as I have no dates to when I worked there.

Cross-Q. 85. Were you on the Draper farm in August, 1876?

A. I might have been, but not to my recollection.

Cross-Q. 86. Same question as to July, 1876?

A. I was there on the 4th of July.

Cross-Q. 87. Same question as to June, 1876?

A. I wasn't there in June—I know it.

Cross-Q. 88. What was the last job that you did for Mr. Kissinger of any kind, before doing this plowing job, and when was it done?

A. I didn't do anything for him in 1876 before I plowed for him.

Cross-Q. 89. What were you doing on the Draper farm on the 4th of July, 1876?

A. I wasn't doing anything; I just went in there to see Mr. Kissinger and talk a little while.

Cross-Q. 90. What did you do there that day?

A. I didn't do anything.

Cross-Q. 91. How long were you there, and whom did you see besides Mr. Kissinger?

A. I might have been there a half an hour—not any longer—and I seen him, and his oldest son, Frank, and the old lady.

Cross-Q. 92. Where did you go to that day from Kissinger's?

A. To Marysville.

Cross-Q. 93. What was the work that you did for Mr. Kissinger next after this plowing that you have spoken of?

A. I didn't do any work for him.

Cross-Q. 94. And are we to understand that that piece of plowing was the only work you ever did for Mr. Kissinger on the Draper farm?

A. No, sir; I worked a good while before that for him. It was quite a good while, too.

Cross-Q. 95. When was it that you worked for him before that?

A. In 1874.

Cross-Q. 96. What part of 1874?

A. In the fall of 1874.

Cross-Q. 97. For how long a time then were you working for him, and what at?

A. A day and a half plowing.

Cross-Q. 98. Did you do any work at all for him according to your recollection in 1875?

A. No; I didn't.

Cross-Q. 99. What was your errand when you visited the Draper farm shortly after your visit to the Centennial Exposition, as you have stated?

A. I went down after a shovel.

Cross-Q. 100. Between 1875 and 1879 were you attending school any part of the time?

A. I was.

Cross-Q. 101. In what year or years, and what part of the years?

A. In the year 1875 in the fall, and in the beginning of 1876. I went to school from December to March.

Cross-Q. 102. Were you not on the Draper farm, every now and then, during each of the years from the year 1874 down to the beginning of 1879?

A. I was, sometimes.

Cross-Q. 103. During the time you were doing the two and a half days' plowing on that farm, and were taking your meals at the house, mention all the persons whom you remember seeing or meeting there.

A. I saw the old gentleman and the young man, Frank, and his youngest sister, and the old lady, to my recollection. I don't remember seeing any person else.

Cross-Q. 104. Did you notice the wooden pipe and the trench that you have referred to, on the first day, or on one of the later days of that job?

A. It was the second day I was there that they were working at it.

Cross-Q. 105. Do you recollect going to the house for your meals, and taking your horses to the spring for water, on the first day that you were there plowing?

A. I didn't take the horses the first day. I went to the house for my dinner, though, and fed the horses at the barn.

Cross-Q. 106. Then, on the first day, did you first go to the house for your dinner; or first take your horses to the barn to feed them, or how was it?

A. I left the horses go to water first themselves; then I fed them, and went up to the house for dinner.

Cross-Q. 107. Then, if I understand you, at noontime of the first day you went to the barn, fed the horses, and then went from the barn to the house for your dinner. Is that correct?

A. Yes, sir.

Cross-Q. 108. Did you go from the barn to the house by the direct path; If not, how did you go?

A. I went by the direct path.

Cross-Q. 109. And after dinner did you return to your work by way of the barn?

A. I did.

Cross-Q. 110. You have said that it was the second day that you were there, that they were working at it (meaning the trench, or the wooden pipe, or both); who was it that were working at that job the second day you were there plowing?

A. Mr. Kissinger was working at it the second day; and the man is dead now that was helping him; but he didn't eat dinner there.

Cross-Q. 111. Was the half day that you worked on that occasion the first or the last of your jobs there?

A. The last.

Cross-Q. 112. Did you take any meal at the Kissinger house on that last day, and if yes, what meal or meals?

A. I didn't take any meal.

Cross-Q. 113. When you went to Mr. Kissinger's for a shovel did you get it, and if yes, from whom?

A. I got it from Mr. Kissinger, or rather he told me where to get it, and I went and got it.

Cross-Q. 114. Was that a tool which Mr. Kissinger had borrowed?

A. Yes, sir.

Cross-Q. 115. During the years he was living on the Draper farm he was quite in the habit, wasn't he, of borrowing tools and materials of one kind and another from your father?

A. Sometimes he borrowed, but I didn't always go for them.

Cross-Q. 116. With whom have you recently had any talk about this matter of the ram on the Draper farm, and the matters connected with it?

A. I couldn't tell you; there has never been anything said to me till I was subpœnaed—not lately.

Cross-Q. 117. With whom have you had any talk on the subject within the last six or eight months?

A. I have had no talk on the subject. My father was talking to Mr. Miller about it.

Cross-Q. 118. What Mr. Miller is that that you refer to?

A. Mr. O. H. Miller, the constable at Marysville; he came up.

Cross-Q. 119. But you wish us to understand, do you, that no one within the last six or eight months, and before you were summoned to

testify, had said anything to you, or had any talk with you, about the Kissinger ram, or matters connected with it?

A. I do. As far as I know there has never been anything said to me during that time, nor before it, since a year after the ram was in, or more.

Re-direct by Mr. Hill:

Q. Q. 120. You have stated in cross-examination that you were away from home from some time in January, 1879, till some time in December, 1879. From the time when you returned home in December, 1879, till the time when George Kissinger moved away to Maryland, about the 1st of April, 1880, were you living at your father's home?

A. I was.

Q. Q. 121. Was it during that time, from December, 1879, till the 1st of April, 1880, that Mr. Kissinger was up at your father's house, and told you that the new iron pipes had been used to repair the ram with?

[*Objected to as not re-examination, as leading, perverting the testimony, and putting statements into the mouth of the witness.*]

A. It was in the year 1878 that he was up—during the year. It was in 1878 that the pipes were put in; so it was in 1879 that he came there. It was after Christmas; he came for his corn.

Q. Q. 122. Do you mean that it was between Christmas, 1878, and the time when you went away from home in January, 1879, to be gone eleven months?

[*Objected to as leading, and not re-examination.*]

A. Yes, sir.

Q. Q. 123. You have stated that Mr. Kissinger sometimes borrowed things, but you did not always go after them. When Mr. Kissinger borrowed anything did he generally return it himself, or did the owner of it have to go or send for it?

A. The owner generally had to go after it or else send for it.

Q. Q. 124. You have stated in cross-examination that while you were plowing for Mr. Kissinger, in September, 1876, Mr. Kissinger was at work on the second day about the wooden pipes and the trench, and that a man who is now dead was helping him at it, but did not take dinner there; who was that man?

A. Mr. Meals—the old gentleman.

Q. Q. 125. Where did he live at that time?

A. He lived in one of Mr. Draper's tenant-houses, on the farm where Mr. Kissinger lived.

Q. Q. 126. Tell us, as near as you can, where that tenant-house stood that Mr. Meals then lived in.

A. It stood on the north-east part of the farm, right on top of the hill that is near the village, near the road, and on the left hand side coming down the valley road towards Marysville.

Q. Q. 127. A portion of the village of Marysville is built on the side of that hill that slopes towards the Susquehanna river, is it not?

A. Yer, sir; it is.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 11th day of January, 1884.

FRED. M. OTT,
Examiner.

JOHN W. COWEN.

EZRA F. GILBERT, *being produced, affirmed, and examined, saith:*

Examined by Mr. Hill:

My age is 42; I reside at Eberly's Mills, Cumberland county, Pa.; I am farming now.

Q. 1. How long have you resided at or near Eberly's Mills?

A. Since 1866 or 1867—one of those two; I came back from the army in 1865, and I think it was the next spring or summer; it might have been 1867.

Q. 2. Did you ever have a man in your employ named William Meals?

A. Yes, sir.

Q. 3. While he worked for you, did you keep any book account with him?

A. Yes, sir.

Q. 4. Have you that book here in which his account was kept at that time?

A. I have.

Q. 5. Will you please produce that book and point out that account in it?

A. Yes, sir; here it is.

[*Witness produces book.*]

Q. 6. Who wrote this account in the book?

A. I did.

Q. 7. When?

A. At the time of the date--when he was living with me.

Q. 8. In whose possession has that book been from that time to this?

A. My own.

Q. 9. By reference to the book to refresh your memory, are you able to state the time when he commenced working for you, and when he finished working for you?

A. Yes, sir.

Q. 10. Please state when he commenced working for you and when he finished working for you.

A. He commenced August the 3, 1876, and quit October the 7, 1876.

Q. 11. Was that the only time that that Mr. Meals ever worked for you, or did he work for you at some other time before or after that time?

A. That was the only time.

Q. 12. Do you know where that Mr. Meals came from or where his home was before he came to you?

A. Marysville, Perry county, Pa.

Q. 13. Was he a young or an old man at the time he worked for you?

A. He was a young man.

Q. 14. I notice that the account which you have exhibited here is written partly on one page and partly on another page of your book, and that the name is spelled "Meals" on the first page where it occurs; and on the second page it is spelled "Mills;" how came the names to be spelled differently on the two pages?

A. When he first came I asked him his name, and one of the time I understood him to say "Mills," and then I asked him his name and he said "Meals;" it refers to the same man in both places.

[*Respondents' counsel requests the examiner to copy on to the record, at this point, the account referred to by the witness, as it appears on the book. The account is as follows:*

"1876
Aug 3rd Wm. Meals,
Commenced work
Terms ten dols per month"

The above appears on page 7 of the book; on page 10 the account is continued as follows:

"1876. Eberlys Mills,

Aug 26. Wm. Mills, Dr.	
By cash	25
Tobacco	25
Sep 2nd tobacco	25
" 8 by pants	$1 25
" 9 by shoes	1 65
" 9 by cash	25
11th tobacco	25
Sep 16th by cash	$1 00
23 Tobacco fine cut	10
30th by cash	5 00
	10 25
Settled Oct 7, 1876,	
	20 33
and paid in full	10 25
	10 08"]

Q. 15. What kind of work did Mr. Meals do for you at the time he was working for you, as you have testified?

A. He worked as a farm hand.

Examination taken, reduced to writing, and by the witness affirmed and subscribed to before me, this 11th day of January, 1884.

FRED. M. OTT,
Examiner.

E. F. GILBERT.

Adjourned until January 12, 1884, at 10, A. M.

January 12, 1884, 10, A. M.

Examination resumed.

Present, Mr. Storrow for complainants and Mr. Jacobs for respondents.

Mrs. MARY MCFARLAND, *being produced, sworn, and examined, saith:*

Examined by Mr. Jacobs:

I am the wife of Daniel McFarland, a wood-chopper, residing at Lebanon, Lebanon county, Pa.

Q. 1. Did you ever reside at Marysville, Perry county, Pa.?

A. Yes, sir.

Q. 2. When did you move there?

A. In the spring of 1876, in June.

Q. 3. Where did you move from?

A. From Dauphin, Dauphin county.

Q. 4. How were your household goods transferred from Dauphin to Marysville?

A. I shipped them by railway—on the Northern Central railroad.

Q. 5. When did you move away from Marysville?

A. In the spring of 1877, in April.

Q. 6. Where to?

A. To New Market, Cumberland county, Pa.

Q. 7. Do you mean the New Market just across the creek from New Cumberland?

A. Yes; I believe it is in York county.

Q. 8. How were your household goods transferred from Marysville to New Market?

A. By the Northern Central railroad, to New Cumberland.

Q. 9. Have you ever resided at Marysville since you moved away from there to New Market, in April, 1877?

A. No, sir.

Q. 10. Whilst residing at Marysville during the period you have fixed, were you at any time on the farm occupied by George W. Kissinger?

A. I was.

Q. 11. For what purpose did you go there?

A. Picking cherries.

Q. 12. How often did you go there to pick cherries?

A. I was there twice.

Q. 13. Who went with you the first time, and whom did you meet there, if anybody?

A. I went with my husband and my sister, Mrs. James Champion; and her family came afterwards.

Q. 14. What members of her family?

A. Her husband and the three girls.

Q. 15. About how old was the youngest of her girls at that time?

A. I think she was about eight.

Q. 16. What was she doing whilst you were picking cherries?

A. Playing upon the logs.

Q. 17. Can you give us any idea of the size of the logs upon which she was playing—their length and thickness?

[*Objected to as asking for guess-work.*]

A. I should judge that they were about the length of a fence-rail; I don't think they were a foot through; near about that, as near as I can tell.

Q. 18. What was the little girl doing about the logs when you noticed her?

A. Playing upon them, and sticking sticks in the ends of them.

Q. 19. Will you explain more fully how she was sticking sticks in the ends of them?

A. I couldn't any further than that she had sticks, and was playing, and putting them in. I couldn't say any more.

Q. 20. Putting them into what?

A. Into the holes at the end of the logs.

Q. 21. How were the holes put into the logs—lengthwise, or crosswise, or how?

[*Objected to as leading.*]

A. Lengthwise.

Q. 22. Were there many or few logs at the place she was playing?

[*Objected to as indefinite.*]

A. I think there were quite a good many.

Q. 23. How far were the logs lying from the trees from which you were picking cherries?

A. Not far.

Q. 24. Whereabouts on the farm were the logs?

A. In a field adjoining the barn.

Q. 25. On which side of the barn were they?

A. On the right-hand side—between the river and the barn it would be.

Q. 26. How did you go to the Kissinger place on that day—I mean what route did you take?

A. We went out the Fishing Creek road from Marysville, and through a lane, and through a pair of bars into a field to the cherry trees.

Q. 27. Did you pass by or near the house in going to the cherry trees?

[*Objected to as leading.*]

A. I passed by, but not just so close—the lane was not just so close to the house.

Q. 23. Have you ever been on the Kissinger place since you moved away from Marysville to New Cumberland in April, 1877?

A. No, sir.

Cross-examined, de bene esse, by Mr. Storrow:

Cross-Q. 29. If you have any definite recollection as to how many logs you think you saw, will you state what it is?

A. I could not, as to number.

Cross-Q. 30. Will you state what your impression is on the subject, and how strong your impression is?

A. I should judge that there was somewheres in the neighborhood of between forty and fifty.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 12th day of January, 1884.

FRED. M. OTT,
Examiner.

MRS. MARY MCFARLAND.

MRS. LEAH NICHOLS, *being produced, sworn, and examined, saith:*

Examined by Mr. Jacobs:

I am the wife of Samuel Nichols, of White Hill, Cumberland county, Pa.; he runs a stationary steam engine.

Q. 1. Your husband is the same Samuel Nichols who testified at Harrisburg in this case in May, 1881, (see defendants' printed record, p. 238,) is he not?

A. Yes, sir.

Q. 2. And you are the mother of Edward M. Nichols, who testified at Philadelphia in this case, in December, 1882, (see complainants' printed record, p. 852, *et seq.*,) are you not?

A. Yes, sir.

Q. 3. Your son testified that he worked for David A. Hauck for several months in 1874, in the machine-shop at Eberly's Mills, also occupied by Daniel Drawbaugh; do you remember the fact of his working there for Mr. Hauck at the time?

A. Yes, sir.

Q. 4. Whilst your son Edward was working there for Mr. Hauck,

did you or not hear him speak of anything that Mr. Drawbaugh was making in that shop? If so, please state what it was.

A. Oh! yes; he said he was making a talking-machine, or some-like it; he said he was making something to talk through.

Q. 5. Did you hear your son Edward speak of this once or more than once?

A. Oh, I heard him often talking—him and his Pap—still, about it.

Q. 6. He was living at home whilst he worked at Eberly's Mills for Mr. Hauck, was he not?

A. Yes, sir.

Q. 7. He testified that some time in the spring of 1875 he went to Iowa and stayed four months; has he been living at home any time since that time?

A. Yes; he came home that fall and stayed a couple of months, and then he came home again in August; then he went out to Michigan, and then he came back that winter and stayed at home again till he was married, and a good while afterwards; he was over a year at home then; he was married on the 28th of April, and I think he stayed at home until the next October; he was at home, from the time he came home from Michigan, over a year—over a year and a half, I guess.

Cross-examined by Mr. Storrow:

Cross-Q. 8. Where has your daughter, Mrs. Reynolds, been living lately?

[*Objected to as irrelevant to the direct examination.*]

A. She lives about two miles and a half on the other side of Shiremanstown.

Cross-Q. 9. Has she been staying with you lately—within the last six months?

[*Same objection.*]

A. No; not more than she was about two weeks and a half at home here a couple of weeks ago; she only went home on Thursday.

Examination taken, reduced to writing, and by the witness sworn and subscribed to (by making her mark) before me, this 12th day of January, 1884.

her
MRS. × LEAH NICHOLS.
mark.

FRED. M. OTT,
Examiner.

Recess until 2, P. M.

January 14, 1884, 10.30, A. M.

Examination resumed.

Present, Mr. Storrow and Mr. Howson for complainaints, and Mr. Hill and Mr. Jacobs for respondents.

CALVIN KEIM, *being produced, affirmed, and examined, saith:*

Examined by Mr. Hill:

My age is twenty-nine; I reside at Marysville, Perry county, Pennsylvania; I am a flagman on the Northern Central railroad.

Q. 1. How long have you been steadily in the employ of the Northern Central Railroad Company?

A. Since the 18th of August, 1877.

Q. 2. Previous to your engaging in the employ of the railroad company, how did you use to employ yourself?

A. I worked on the floating-gang on the Pennsylvania road.

Q. 3. Did you do any other work during that time; if so, what other kind of work did you do?

A. That is all the work I done for some time.

Q. 4. How long have you lived at Marysville?

A. About eight years, as near as I can tell.

Q. 5. Did you use to know George W. Kissinger, who lived on the Draper farm, just back of Marysville?

A. Yes, sir.

Q. 6. Did you ever do any work for him?

A. Yes, sir.

Q. 7. What kind of work, and when?

A. Cutting off corn in the fall of 1876, as near as I can tell.

Q. 8. You say that you began to work steadily for the railroad company in August, 1877. Tell us whether you have ever cut off any corn for anybody since the time you went to work for the railroad company in August, 1877.

A. No, sir.

Q. 9. Did Mr. Kissinger pay you in cash for the work you did for him in the fall of 1876?

A. No, sir.

Q. 10. If he paid you at all for that work, will you tell us how he paid you?

A. With corn.

Q. 11. When did he pay you in corn for that work? If you can't fix the time exactly, fix it as nearly as you can.

A. It was in the spring, or towards spring—I don't know exactly what month—in 1877.

Q. 12. What did you want corn for in the spring of 1877?

A. To feed the pigs.

Q. 13. How many pigs did you keep that spring, and where did you get them?

A. Two; I bought them at Solomon Moyer's and Amanda Moyer's sale.

Q. 14. Can you give us the date when you bought those pigs at that sale?

[*Objected to as too remote and as immaterial.*]

A. No, sir.

Q. 15. Did you make any entry of the purchase of those pigs in any book, or make any memorandum of it at the time you bought them?

[*Same objection.*]

A. Yes, sir.

Q. 16. Have you that book or memorandum here in which you entered the purchase of those pigs at the time that you bought them?

[*Same objection.*]

A. I haven't got the book here; I have got a slip here that I copied off of the book.

Q. 17. Please produce the slip which you say you copied from your memorandum book.

[*Same objection.*]

A. Here it is. [Witness produces a slip of paper which contains the following words written in pencil: "Feb. 17th, 1877; bought piggs at Moyers sale."]

Q. 18. Did you sell, or butcher those pigs?

[*Same objection.*]

A. I butchered them.

Q. 19. As near as you can, please tell us when you butchered those pigs.

[*Same objection.*]

A. About the holidays—Christmas and New Year's—I bought the

hogs in the spring and butchered them in the fall, about the time of the holidays.

Q. 20. When you were cutting corn for Mr. Kissinger, in the fall of 1876, how long did you work for him?

A. Two days, at least.

Q. 21. Did you cut corn for him at that time on the farm where he lived—the Draper farm?

A. I cut corn for him on the farm where he lived, but I don't know who the farm belonged to.

Q. 22. Mr. Kissinger at one time had a hydraulic ram put in on that farm to throw the water from the spring up to the house. I desire to find out, if possible, how long ago that ram was first put in there. If you ever saw that ram at any time, or know anything about it, will you tell us what you know about it?

A. I seen the ram in there; I don't know how long it was put in before I seen it.

Q. 23. When did you first see the ram in there, and what were you doing on the farm that caused you to be there at the time?

A. I was cutting off corn; it was in 1876, as near as I can recollect.

Q. 24. Where was the ram at that time?

A. Between the house and barn, in a hollow.

Q. 25. Was the ram under ground or above ground when you saw it there at that time?

A. Under ground.

Q. 26. Was it covered over in any way or not?

A. Covered over with boards.

Q. 27. If the ram was covered over, how did you get at it to see it?

A. As near as I can tell, I looked down through the cracks of the boards.

Q. 28. Did you at that time notice any peculiar appearance about the ground around there or not; and if yes, state what it was.

A. No, sir; I did not.

Q. 29. Did you notice whether anything had been done to the ground between the ram and the house or not?

[*Objected to as leading.*]

A. Yes, sir; up next to the house I seen a trench being dug, and the ground thrown up in a ridge.

Q. 30. Do you mean to say that you saw them digging a trench?

[*Objected to as leading.*]

A. No, sir.

Q. 31. What, then, do you mean by saying that you saw a trench being dug?

[*Same objection.*]

A. I seen a trench dug there and the ground laying up on a ridge.

[*Examination of this witness suspended to enable him to go home and get the book to which reference was made in his examination.*]

January 15, 1884, 4 P. M.

Examination of Calvin Keim resumed:

Examined by Mr. Hill:

Q. 32. Your examination yesterday was suspended to enable you to go home and get the book which you mentioned as containing the memorandum about the purchase of the pigs; have you now got that book here?

A. Yes, sir.

Q. 33. Will you please produce it, in order that the examiner may copy the memorandum directly from the book?

A. Yes, sir; here it is. [Witness produces book containing, among other entries, in pencil, the following memorandum:]

"Bought pigs at Solomon Moyer's sail for 12.50
on 17 of February,
1877."]

[*The book and entries objected to as not evidence of anything therein stated.*]

Q. 34. In whose handwriting is that entry about the pigs?

A. In mine.

Q. 35. When did you write that entry in the book?

A. I can't tell exactly whether I wrote it when I came home from the sale in the evening, or whether I done it in a day or two afterwards.

Q. 36. You can tell whether it was written in within a few days of the sale, I suppose, or whether it was written in recently?

[*Objected to as leading.*]

A. Within a few days after the sale.

Q. 37. In whose possession has this book been ever since that date?

A. In mine and my father's.

Cross-examined by Mr. Howson:

Cross-Q. 38. Are you still living in Marysville, in the same house in which you were living in 1876 and 1877?

A. I am still living in Marysville, but not in the same house.

Cross-Q. 39. You have mentioned your father as having had this book in his possession; is he still living; and during what period of time has the book been in his possession?

A. Yes, sir, he is still living; and it has been two years—going on three years, that the book has been in his house.

Cross-Q. 40. Was it your father's property, or your own, upon which the pig was kept that has been referred to in your examination-in-chief?

A. My father's.

Cross-Q. 41. And did he keep pigs before these particular pigs that you have testified about?

A. Yes, sir.

Cross-Q. 42. And did he keep any after?

A. Yes, sir.

Cross-Q. 43. Down to what time did you continue to live with him?

A. I can't tell exactly—about three years—two years ago—going on three.

Cross-Q. 44. That is to say you were living with him until some time in the year 1881; is that it?

A. Yes, sir.

Cross-Q. 45. Was he keeping pigs down to the time you left home?

A. I don't know whether he had any at that time exactly or not.

Cross-Q. 46. Do you wish us to understand that since the time when you went steadily into the employ of the Northern Central Railroad Company you have done no work at all outside of railroad work?

A. No, sir; I have not.

Cross-Q. 47. What time of the fall was it—tell us precisely what month, and what time of month—when you cut corn for Mr. Kissinger?

A. I can't tell what month it was nor what time.

Cross-Q. 48. Have you no idea whether it was September, October, or November, or whether early in the fall or late in the fall?

A. I can't tell whether it was in either month, but it was in the fall.

Cross-Q. 49. On what part of the farm was that corn raised?

A. On the northern part of the farm.

Cross-Q. 50. Can you locate the ground a little more exactly, either by reference to the house or to the barn?

A. It was right north from the house.

Cross-Q. 51. Was it near the road, or some distance back from the road?

A. A distance back from the road.

Cross-Q. 52. How lately have you been on the farm?

A. As near as I can tell I was there the last year Kissinger lived on the farm.

Cross-Q. 53. You were acquainted with Mr. Kissinger and his family, or any of them, and visited the family every now and then up to the time Mr. Kissinger moved away; is that the case?

A. I was acquainted with part of the family and with Mr. Kissinger, but was not there up to the exact time he moved away.

Cross-Q. 54. But the fact is that you were on that farm now and then to the up time when Mr. Kissinger and his family moved away; is not that so?

A. I was there on the farm, but, as I said before, not up to the time he moved away.

Cross-Q. 55. You seem to be vastly particular about stating that you were not there up to the time he moved away; you have already told us that you were there, as near you can tell, the last year Mr. Kissinger lived on the farm; I suppose you stick to that statement?

[*Objected to as a badgering, and improper mode of cross-examinntion, entirely uncalled for by anything the witness has said.*]

A. Yes, sir.

Cross-Q. 56. Who was with you at the job of cutting the corn, to which you have testified?

A. I can't recollect who worked with me.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 15th day of January, 1884.

FRED. M. OTT,
Examiner.

CALVIN KEIM.

Recess until 2, P. M.

January 14, 1884, 4, P. M.

HENRY GAMBER, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

My age is forty-eight; I reside at Marysville, Perry county, Pa.; I am working on the railroad now.

Q. 1. How long have you resided at Marysville?

A. Since 1869, when I moved there.

Q. 2. Did you ever follow the butchering business at Marysville?

A. Yes, sir.

Q. 3. A man by the name of George W. Kissinger, who has testified as a witness for complanants in this case, used to live at Marysville, and some time about the year 1870 moved away to Milltown, Cumberland county, where he stayed till the beginning of April, 1874, when he moved back on to the Draper farm, just back of the village of Marysville, Perry county, and lived there six years. Did you know that Mr. Kissinger or not?

A. I knowed him; yes, sir.

Q. 4. Did you ever have any book account with him or not while he was living at Marysville the second time?

A. Yes, sir; I have.

A. 5. What business were you engaged in when you contracted the book account with him?

A. I was butchering.

Q. 6. If you have your book account with him, will you please produce the book and point out the account?

A. Here is the account.

[*Witness produces two account-books, and states that the account begins in one and ends in the other. The first item in the account is on February* 26, 1876, *and it runs on from that time through the various months of* 1876 *to and including November, immediately after which follows an entry of January* 18, *another entry of March* 29, *and another of April* 27, *the year of these last three entries not being entered on the book, and the entry of April* 27 *referred to being the last entry in the account.*]

Q. 7. In whose handwriting is this Kissinger account in your books?

A. It is all pretty near in my handwriting except this last item here of April 27th, which is Fenn's.

Q. 8. What Fenn?

A. Theo. Fenn's, the squire's brother.

Q. 9. Was the book ever in Theo. Fenn's hands; if so, when and for what purpose?

A. For collection, for Wils. Bear; that was in 1878, I think.

Q. 10. Among the index pages of the book, between the indexed names beginning with S and those beginning with W, I find the following entry, in writing in the book:

"Marysville, April 24th, 1878, for value received, I hereby assign, set over, and transfer to Wilson Bear all my right, title, and interest in this account book, or to all accounts contained in this book, to hold or sue and collect the same for his use. Witness my hand this 24th day of April, 1878.

(Signed). HENRY GAMBER.

Witness to signature,
THEO. FENN, J. P."

This entry, I suppose, refers to the time when the account became Mr. Wilson Bear's property, does it?

A. Yes, sir; that was the time.

Q. 11. That assignment was witnessed by Theo. Fenn, justice of the peace; was that the old gentleman?

A. Yes, sir; he was then justice of the peace. He is now dead.

Q. 12. Who put these accounts in Mr. Fenn's hands for collection—you or Mr. Bear?

A. Mr. Bear put them in Mr. Fenn's hands.

Q. 13. You say that you think it was 1878 that the book was in Mr. Fenn's hands; does the date of the assignment—April 24, 1877—help you to fix that time?

A. Well, I was sold out in the fall of 1877, and in the spring I transferred this book over to Mr. Bear.

Q. 14. What I want to know is, how long the book was in Mr. Fenn's hands before it was returned to you, and when it was returned to you.

A. It was returned to me in 1878; it was in his hands about a year.

Q. 15. In whose possession has the book been ever since it was returned to you?

A. In my possession.

Q. 16. In whose possession were the books up to the time when you assigned them to Mr. Bear?

A. In mine.

Q. 17. You say that all the entries in this Kissinger account in the books are in your handwriting except the last item; am I correct?

A. Yes, sir.

Q. 18. When did you write the various items in this Kissinger account in the book?

A. I generally posted my book every evening after I had been peddling; I generally peddled three times a week.

Q. 19. Mr. George W. Kissinger at one time put in a hydraulic ram on the Draper farm to throw the water from the spring up to the house; did you ever see that ram after it was put in on that Draper farm or not?

A. Yes, sir; I seen it.

Q. 20. Are you able to fix the day when you first saw that ram at the Kissinger place?

[*Objected to as incompetent.*]

A. I can't just exactly tell you whether it was the first time I saw it; but on the 26th day of September, 1876, I saw it.

Q. 21. Will you tell us what you were doing there on the 26th day of September, 1876, when you saw it?

A. I killed a calf for Mr. Kissinger.

Q. 22. Where did you kill that calf?

A. I killed it right alongside of the ditch from the ram to the house.

Q. 23. Where did you dress the calf?

A. Right under an apple tree.

Q. 24. While dressing it, did you hang the carcass up?

A. I hung it on the limb of an apple tree with a rope.

Q. 25. What became of the meat and the skin of that calf?

A. Kissinger kept the meat and I got the skin.

Q. 26. Did you make any entry of the transaction in any account book or anywhere?

A. Yes, sir; I gave him credit for the calf-skin.

Q. 27. In what account book did you make that entry?

A. This here one of 1876.

Q. 28. Please point out the entry.

A. Here it is. [Witness points out entry, as follows: "Sep. 26, 1 calf-skin, $1 00."]

Q. 29. Will you tell us whether you ever butchered a calf on Mr. Kissinger's place after that time or not?

A. Not after that I didn't—nor before, neither.

Q. 30. Will you tell us whether or not you ever made any book-charges against Mr. Kissinger after the time when you assigned the accounts to Mr. Bear?

A. No, sir; I didn't.

Q. 31. At the time when you butchered that calf at Mr. Kissinger's place, how came you to see the ram?

A. Mr. Kissinger and I started for the calf. Then he took me over to the pipes and we looked at them; and he said it was a pity that the ram didn't work. Then we walked on down to the ram.

Q. 32. Where was the ram?

A. It was down in the hollow between the house and barn.

Q. 33. What kind of a place was it in?

A. It was a kind of a wet place.

Q. 34. Was the ram underground or above ground?

[*Objected to as leading.*]

A. It was in a hole between four and five feet deep.

Q. 35. Tell us whether the hole was covered over or not.

A. No, it wasn't covered over.

Q 36. Do you remember the shape of the hole?

A. Square.

Q. 37. Was there anything to prevent the dirt from caving in at the sides?

A. It was planked.

Q. 38. If I understand you it was not stoned up at the sides, but planked up—is that your meaning?

[*Objected to as leading.*]

A. At that time it was—yes, sir.

Adjourned until January 15, 1884, at 10, A. M.

[*Henry Gamber, the witness on the stand at the adjournment yesterday, not having appeared, the time was utilized by the examination of other witnesses, leaving his deposition to be concluded upon his arrival.*

The remainder of Henry Gamber's deposition, taken January 16, 1884, *is printed here for convenience of referenee.*]

JANUARY 16, 1884.

Examination resumed pursuant to adjournment.

Present same counsel.

Examination of Henry Gamber by Mr. Hill continued:

The witness makes the following statement:

There is a mistake that I wish to correct; the entry of the year in the book misled me; I discovered it after I went home; it was a mistake of a year. The time when I butchered the calf for Mr. Kissinger, and got the calfskin from him, was September 26, 1877, instead of September 26,

1876; and the time that I saw the ram there was September 26, 1877—the time that I killed the calf.

Q. 39. You state that you assigned your accounts to Wilson Bear on the 24th day of April, 1878, and that you then delivered up the accounts to Mr. Bear, who placed them in Mr. Theo. Fenn's hands for collection, and that it was about a year after that that the account book was returned to you; in answer to question fourteen you stated that the book was returned to you in 1878; if it was returned to you in 1878 it could not have been in Mr. Bear's or Mr. Fenn's hands more than about eight months; now I wish you to give me your best recollection as to how long the book was in their hands before it was returned to you.

A. About a year, as near as I can tell; may be a little more than a year; I couldn't just give you the exact date.

Q. 40. What was the reason of your assigning your accounts to Mr. Wilson Bear on the 24th day of April, 1878?

A. I owed him for some cattle.

Q. 41. Did you assign the accounts to him as security for his pay, or did you sell the accounts to him outright?

A. They were security.

Q. 42. Did Mr. Wilson Bear collect his debt and then return the book to you?

[*Objected to as irrelevant and immaterial.*]

A. I believe so.

Q. 43. After Mr. Bear returned the book to you, did you ever use the book again for making entries in the course of your business, or did you use some other book?

A. I used another book.

Q. 44. When you assigned your accounts to Mr. Bear, on April 24, 1878, did you continue on in the butchering business after you assigned the accounts to Mr. Bear, or did you go out of the business immediately?

A. I started up again.

Q. 45. As Mr. Bear had your old account-book in his possession, I suppose you had to obtain a new book and open an account in it, did you?

A. Yes, sir.

Q. 46. If you have that new book here, will you please produce it, in order that it may be examined by counsel?

A. Yes, sir; this is the new book.

[*Witness produces book.*]

Q. 47. In this new book, which you have produced, is there any account entered with Mr. George Kissinger?

A. No, sir.

Q. 48. Can you tell me when this new account-book was first opened, and what is the first date in it?

A. Not without referring to the book. [Witness refers to book.] May the 9th, 1878.

Q. 49. After you started up the butchering business again, May 9, 1878, how long did you continue in the business?

A. I continued till about July—I think it was—of 1878.

Q. 50. What did you then do with the butchering business?

A. Sold out to Mr. Joseph Gensinger.

Q. 51. After you sold out to Mr. Joseph Gensinger in July, 1878, did you ever go into the butchering business again or not?

A. No, sir.

Q. 52. If I understand your testimony correctly, your old book of accounts—the first which you referred to in your testimony here—was handed over to Mr. Bear at the time when you assigned it to him as security for his debt on the 24th of April, 1878, and was never afterwards used in your business to enter charges in; am I correct or not?

[*Objected to as incompetent.*]

A. Correct.

Q. 53. You stated this morning, upon coming into the room here, that the book had misled you in regard to Mr. George Kissinger's account to the extent of one year by reason of the entry of the year in the book misleading you; will you point to the entry which misled you?

A. This one. [Witness points to the entry of the figures "1876," at the top of the left-hand column, on page 17, said column containing the continued account of Mr. Kissinger as continued from the earlier book produced by him with this book in answer to question 6.]

Q. 54. In answer to question 6, you produced two books at the same time, one containing the commencement of Mr. Kissinger's account, and the other containing the end of it; for the sake of clearness, let us call the first book—the one which contains the beginning of Mr. Kissinger's account—book No. 1, and let us call the second book—which contains the end of Mr. Kissinger's account—book No. 2, and let us call the third book of accounts—the one which you have produced this morning

for the first time, and which opens May 9, 1878, and which contains the accounts from that date until the time when you sold out to Mr. Gensinger in July, 1878—book No. 3, and I will ask the examiner to mark the books accordingly.

[*The examiner marks said books accordingly for identification, the same to be produced when called for upon reasonable notice as to time.*]

Now I will ask you which of these three books was assigned and delivered over to Mr. Wilson Bear as security for his debt?

A. This one. [Indicating book No. 2.]

Q. 55. After you opened book No. 2, and began to enter your accounts in it, did you ever use book No. 1 for entering accounts in?

A. Not that I know of.

Q. 56. And after you assigned book No. 2 to Mr. Bear as security in April, 1878, you never used either book No. 1 nor book No. 2 to enter accounts in?

[*Objected to as inquiring for secondary evidence, this objection to apply to the last and all succeeding questions upon the same line of inquiry.*]

A. No, sir.

Q. 57. Now, referring to Mr. Kissinger's account on page 17 of book No. 2, if I understand your previous testimony correctly, the last item, dated April 27th, was put in the book by somebody after you assigned and delivered the book to Mr. Bear?

A. Yes, sir.

Q. 58. And all the items in the same column above the entry of April 27th were written in the book before you assigned the book to Mr. Bear?

[*Objected to as leading.*]

A. Yes, sir.

Q. 59. The first entry in that column seems to be an entry brought over from book No. 1, and dated some time in 1876, but the month is written so obscurely that I can't make it out; will you please look at it, and tell me what month it is, if you can read the handwriting yourself.

A. I can't tell whether it is July or August; that is the time it was referred from the other book; I think it is August.

Q. 60. The last entry in Kissinger's account in book No. 1 is as follows:

"Aug 10 refer to New book, 8.99."

The first entry—Kissinger's account in book No. 2, is: "refert from book 8 99." Does that help you to determine whether the date is in July or August?

A. Yes, sir—August.

Q. 61. In book No. 2 the next entry that is dated, below the entry last above quoted, is dated "May 1"; in what year was that entry "May 1," if you know?

A. In 1877.

Q. 62. Then the figures "1877" ought to have been written over that entry "May 1," ought they?

A. Yes, sir; they ought to have been written between the first entry (of August) in the column and the entry of May 1.

Q. 63. After the entry of May 1, the entries in the column seem to follow each other in regular order in May, June, July, August, September, October, and November, to November 17; in what year were those entries from May 1 to November 17, entered in book No. 2?

[*Objected to as incompetent.*]

A. In 1877.

Q. 64. After the entry of November 17, the next two entries are January 16 and March 29, respectively; in what year were those two entries written in the book?

A. In 1878.

Q. 65. And after the entry of March 29, above referred to, there is only one other entry, to wit, that of April 27, in the account; this last entry, if I understand you, was written in the book after it was delivered to Mr. Bear?

A. Yes, sir.

Cross-examined by Mr. Howson:

Cross-Q. 66. What work do you do on the railroad, and when did you go to railroading?

A. I work on the repairs; I think it was in 1880 that I went to railroading.

Cross-Q. 67. What were you doing between the time when you quit butchering in 1878 and the time when you went to railroading in 1880?

A. I was working day's work.

Cross-Q. 68. In and about Marysville?

A. Yes, sir.

Cross-Q. 69. For what different parties did you do day's work during that period of time, as nearly as you can recollect?

A. I couldn't just exactly come at that; the last that I worked I was chopping wood for Mr. Galt.

Cross-Q. 70. What other parties in the neighborhood do you remember to have worked for during that time?

A. I was working at a well—digging a well—for Mr. William School.

Cross-Q. 71. How lately have you been on the Draper farm?

A. About two weeks ago.

Cross-Q. 72. Who was with you at that time, and what were you doing there?

A. There was nobody with me; I went there for some milk.

Cross-Q. 73. Where did you go to for the milk—to the house or some other part of the premises?

A. To the house.

Cross-Q. 74. How far from the house on the Draper farm do you now live, and how long have you been living where you do now live?

A. I live about a quarter of a mile; I have lived there about three years—in the house where I live now—since some time in 1880.

Cross-Q. 75. During that time have you been accustomed to go there every now and then for milk or for other supplies?

A. I used to go up there for milk once in a while, but not very often.

Cross-Q. 76. Before you moved to where you now live were you living near to or farther away from the Draper farm?

A. It was a little farther, but very little—about twenty yards.

Cross-Q. 77. Did you ever go to the Draper farm for milk while Mr. Kissinger was still living there?

A. No, sir.

Cross-Q. 78. If I understand the accounts in your book No. 2, you had business transactions with Mr. Kissinger, in the line of your business, down to April, 1878; is that correct?

A. Yes, sir.

Cross-Q. 79. Do you wish to be understood as saying that during the few months after that in 1878 that you were continuing the butchering business, you had no transaction at all with Mr. Kissinger?

A. No, sir, I hadn't; not in the butchering line, I hadn't.

Cross-Q. 80. What transaction of any other kind had you with Mr. Kissinger?

A. I don't know of anything that I had with Mr. Kissinger.

Cross-Q. 81. Had you no transactions of any kind with Mr. Kissinger from March or April, 1878, down to the time when he moved away from that farm; and had you, during that time, no occasion to visit the Draper farm?

A. I had no transaction during that time that I can recollect of; I had no particular occasion during that time to visit the Draper farm.

Cross-Q. 82. Are you prepared to say that during that time you were not on the Draper farm more than once?

[*Objected to as immaterial and irrelevant.*]

A. O, yes; I had been up there several times.

Cross-Q. 83. Did you ever do any butchering for Mr. Kissinger besides the calf-butchering to which you have testified in chief?

A. Not that I know of.

Cross-Q. 84. The entry by which you undertake to fix the time of the calf-butchering is a lead pencil entry in your book, which has been referred to here as book No. 2, said entry being dated September 20th, and being interposed between an ink entry dated September 6 and another one dated September 19th; is that so?

A. Yes, sir.

Cross-Q. 85. You say in your answer to Int. 31, that Mr. Kissinger took you over to the pipes, and that you looked at them; what pipes were they, and where were they when you looked at them?

A. About ten yards west of the house or the door; they were the lead pipe that ran up from the ram.

Cross-Q. 86. How much of this lead pipe did you see on this occasion—how many feet?

A. There might have been ten or fifteen feet maybe; I didn't pay no particular attention to it.

Cross-Q. 87. Was this ten or fifteen feet of lead pipe running along on the ground?

A. It was up off of the ground, maybe two feet, at the end of it; the other part was in the ground—went into the ground.

Cross-Q. 88. I find in your book No. 1, which has been referred to in your direct examination, a charge against Mr. Kissinger of one dollar for butchering; do you recollect that butchering?

A. That I done in the shop.

Cross-Q. 89. What was it that you butchered for him then, and when was it?

A. It was a hog, if I can recollect right. I couldn't tell you when it

was without referring to the book. I think it was in 1870, though, as near as I can come at it.

Cross-Q. 90. Do you live in the village of Marysville?

A. Yes, sir.

Cross-Q. 91. I suppose that living there you have heard a good deal of talk off and on about the putting in of this ram on the Kissinger farm, haven't you?

[*Objected to as immaterial and irrelevant.*]

A. Oh, yes; I have heard them talking about it a good bit.

Cross-Q. 92. On referring to the item of butchering in your book No. 1, which you thought was in 1870, you find that it was in January, 1871, do you not?

[*Mr. Howson points out to witness the entry referred to in cross-question* 89.]

A. Yes, sir.

Cross-Q. 93. At whose request did you attend to give your testimony in this case?

A. Squire Fenn came after me.

Cross-Q. 94. Did Squire Fenn see you, or talk over the matter of the ram with you, more than once, and if "yes," how often?

A. Only once that I can recollect.

Cross-Q. 95. When was that?

A. It was at my house, here in the summer of 1883.

Re-direct by Mr. Hill:

Q. Q. 96. In this book No. 1 the first account with Mr. Kissinger commences December 25, 1870, and runs on down to March 21, 1871; does it not?

A. Yes, sir.

Q. Q. 97. Right under that account, and on the same page, there is a short account with J. Kunkel, in 1871; is there not?

A. Yes, sir.

Q. Q. 98. And right under Kunkel's account, on the same page, there is a new account with Mr. Kissinger, beginning February 26, 1876, it being the beginning of the account referred to in your examination-in-chief; is there not?

A. Yes, sir.

Q. Q. 99. Where was Mr. Kissinger living when he contracted this account which begins December 25, 1870, and ends March 21, 1871?

A. I think he was living in the town of Marysville.

Q. Q. 100. He moved away to Cumberland county about the time when that account of 1871 ends; did he not?

[*Objected to as not re-examination and as not seeking the best evidence.*]

A. Yes, sir.

Q. Q. 101. When you answered Mr. Howson's question eighty-nine in regard to the time when you butchered the hog for Mr. Kissinger at your shop, and stated that you could not tell when it was without looking at the book, but thought it was in 1870, as near as you could come at it, Mr. Howson had the book in his hands and did not let you look at the entry until after you had answered the question, nor until he asked cross-question ninety-two; is not that the fact?

A. Yes, sir.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 16th day of January, 1884.

FRED. M. OTT,
Examiner.

HENRY GAMBER.

WILLIAM J. MAGLAUGHLIN, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

My age is fifty-six; I reside in Harrisburg, Dauphin county, Pa.; occupation, painter and paper-hanger.

Q. 1. A witness named E. B. Hoffman was examined on behalf of defendants in this case in June, 1881, (see defendants' printed record, pp. 501 to 502 inclusive,) and was recalled and further examined in July, 1881, (see same record, p. 689.) He testified, among other things, that his age was thirty-five; his residence, 1335 Ridge Road, Harrisburg; and his occupation, machinist; tell us whether or not you are personally acquainted with that Mr. Hoffman.

A. I am.

Q. 2. Tell us whether or not you ever went fishing with him; and if so, how many times?

[*Objected to as new matter not rebuttal.*]

A. I did go fishing with him once.

Q. 3. Did you never go fishing with him but once?

A. That is the only time we ever went up the creek; it was very seldom that Ras could get off.

Q. 4. Whom do you mean by Ras?

A. Ras Hoffman; we call him Ras.

Q. 5. You speak of going fishing with him up the creek—up what creek.

A. The Yellowbreeches.

Q. 6. In what year was it that you and Mr. Hoffman went fishing together up the Yellowbreeches?

[*Objections renewed, and to apply to all succeeding questions on this line of examination.*]

A. In 1873.

Q. 7. In what month was it?

A. It was in August.

Q. 8. About how long were you on that fishing expedition?

A. We started for a week; we went away on Monday morning; we came home on Friday; we would have stayed until Saturday if it hadn't been for a raise in the creek.

Q. 9. How high did the creek rise?

A. It rose high enough to bring down all the wood and stuff that was lying along the creek; it fetched down one foot-bridge that I seen, and part of another one.

Q. 10. Where were you camping or staying when that rise took place?

A. We were encamping near the spring, just below what is called now Shanklin's mill; just across from the Studebaker farm.

Q. 11. Is that the Shanklin mill that stands a short distance below Milltown on the creek?

A. There is a mill at Milltown on Cedar run; but Shanklin's mill is on the creek, about a quarter of a mile down the creek from Milltown.

Q. 12. You say that the high water fetched down one foot-bridge that you saw, and part of another; what time of day did this happen; and where were you when you saw the foot-bridges brought down by the flood, and what foot-bridges were they?

[*Objected to as assuming*]

A. I was laying in my tent and was awakened by the rush of the water; I am a light sleeper at any time. I got up and hollowed to the boys that our lines were gone; that the creek was very high. This was early in the morning; and there was a big tree and a foot-bridge coming down over the dam, and we could see them from where we were

encamped. I think it was it striking the foot-bridge at Shanklin's mill that caused the one half of that to go, because it went just after it was under it. I can't tell what foot-bridge the other one was, I can't tell where it came from, but it came down the creek.

Q. 13. What part of the foot-bridge at Etter and Shanklin's mill, or Shanklin's mill, as you call it, was carried away at that time?

A. It was the half on the left-hand side of the creek going up—on the York county side—right at the Studebaker farm.

Q. 14. If you saw the high water bringing down any other floating stuff or materials besides the foot-bridge and tree that you have mentioned, will you tell us what other things you saw floating down on the water at that time?

[*Objected to as leading.*]

A. Well, I saw a great many trees, rails, posts, and such floating stuff as that, and some pumpkins.

Q. 15. You say that when the rush of the waters awoke you in the morning you called the boys; whom do you mean by "the boys?"

A. Hoffman and my son.

Q. 16. What is your son's name?

A. Jacob J. Maglaughlin.

Q. 17. How long did you and your son and Mr. Hoffman encamp there near the Etter and Shanklin mill?

A. From Monday dinner-time until Friday morning.

Q. 18. What were you fishing for?

A. Eels, catfish, and any kind of fish we could catch, and snappers.

Q. 19. Did you go anywhere while you were encamped there?

A. Yes; we went to different place—up into Milltown, up to the farmers to buy things to eat, and up to Drawbaugh's shop to get a net to catch bait-fish with, after the water got so muddy that we couldn't catch them with a rod and line.

Q. 20. Who went up to Drawbaugh's shop on that occasion?

A. Hoffman and myself.

Q. 21. Whom did you see there at Drawbaugh's shop at that time?

A. We saw Mr. Drawbaugh and a little man; I don't know whether it is Drawbaugh's son or his brother; but his name is Drawbaugh.

Q. 22. Tell us all that was done at Drawbaugh's shop while you and Mr. Hoffman were there at that time.

A. We got a net from him to catch bait-fish with, and I think he

he said, "Ras, I've got a talking-machine," or "Hoffman, I've got a talking-machine;" I am not sure which; I think Ras passed the remark, "You are always getting up something new." He went up stairs. He told Ras to listen at a concern that he had there, and he went up stairs and spoke through it, and I laughed at the idea. Ras told me to listen; he said he could hear him, and answered him, and told me to listen; and I did.

Q. 23. When you listened did you hear anything through the machine or not?

A. I did; he asked me if I could understand him; I answered him "yes."

Q. 24. Where was Drawbaugh and where were you when you held this conversation with him—I mean in what part of the shop?

[*Objected to as assuming.*]

A. I was down on the first floor and he was upstairs.

Q. 25. You say that he asked you if you could understand him, and you answered yes; was that conversation carried on through the talking-machine or through the air, without the aid of the talking-machine?

[*Objected to as leading.*]

A. Through the talking-machine. I know it came through an instrument that he had there that I was listening to.

Q. 26. Please look at the instruments marked "F," "B," "C," "C reproduced," and "I," which will be now placed on the table before you by the examiner, and state whether you do or do not recognize any of them as the instrument that you listened to at that time.

[*Objected to as leading and incompetent, no sufficient foundation having been laid for the question.*]

A. This is the only one that I remember of seeing at that time [taking up "I".] It was something similar to that one; it may not have been the same one, but it was similar to it. And there was another one there with a mouth-piece to it.

Q. 27. While you were there at the shop, at that time, did Mr. Drawbaugh tell you how the instruments were operated, or what caused the speech to be transmitted along from him to you?

[*Objected to as a leading and improper mode of inquiry.*]

A. He didn't tell me; him and Hoffman were talking together, and I didn't pay a great deal of attention to it myself.

Q. 28. While you were there at that time did you understand whether the apparatus was worked by electricity or not?

[*Objected to as leading and altogether incompetent.*]

A. I did not.

[*Deposition objected to as not rebuttal and cross-examination, de bene esse, by Mr. Howson.*]

Cross-Q. 29. Were you living in Harrisburg in 1873, and have you been living there ever since that time?

A. I have and was.

Cross-Q. 30. Are you carrying on the business of painting and paper-hanging on your own account in the city of Harrisburg?

A. I am.

Cross-Q. 31. When did you make the acquaintance of Mr. E. B. Hoffman, and where?

A. It is hard to tell when or where, but it is a good many years; I knew him a good many years before he was married.

Cross-Q. 32. You and he, then, as I understand your testimony, have been quite intimate acquaintances for a good many years, and were so prior to 1873; is that correct?

A. That is correct, sir.

Cross-Q. 33. Whereabouts in Harrisburg is your residence, and where was it in June, 1881?

A. It was 115 North street—just where it is now.

Cross-Q. 34. Are you and Mr. Hoffman related or connected in any manner?

A. No, sir; only on friendly terms, that is all.

Cross-Q. 35. Have you and he been on fishing excursions at other times besides this occasion which you think was in 1873?

A. Not to encamp out; he couldn't get away from his business.

Cross-Q. 36. You say you started on that excursion on a Monday morning; how long had you been out when you were wakened up, as you have stated, by the rising of the water?

A. We went on Monday morning, and got there about dinner-time, and fished until Friday morning; Thursday night the creek rose so high. We lost several of our lines and couldn't get them, and we couldn't catch any more fish, and so we came home on Friday; we had calculated to stay until Saturday.

Cross-Q. 37. Did you return home early in the day on Friday?

A. I think we got home some time in the afternoon—two or three o'clock, or along there; we wasn't in any hurry about getting home. It is easier to push a boat down stream than it is up, especially when you have a fish-box behind it. After we got into the Susquehanna river we had to pull the boat up stream against the current.

Cross-Q. 38. How long have you been familiar with the line of the Yellowbreeches creek, and the mills, and bridges, and so forth, along the creek?

A. Twenty-five or thirty years; I have gunned and fished pretty near all my life along it.

Cross-Q. 39. And you spend quite a good deal of time in season, don't you, in gunning and fishing in that section of country, and in other sections of country around Harrisburg?

[*Objected to as immaterial.*]

A. I haven't done any fishing for several years—ever since they prohibited the setting of out-lines. In the fall of the year, if work is slack, or if I have no work, I go gunning, but if I have work I attend to it.

Cross-Q. 41. If I understand you, you had your lines out up to the very last night of that fishing excursion; is that correct?

A. Yes, sir; we never move a line as long as it fishes well, and when it don't fish well we move it to some other ground.

Cross-Q. 42. And were you fishing on that one spot during the whole period of the excursion?

A. What do you mean by one spot? We fished nine or ten lines, stretched clean across the creek from one side to the other.

Cross-Q. 43. What I mean is, was all your fishing done in that part of the creek which is just below the Etter & Shanklin mill?

A. No, sir; we fished above the dam as well as below.

Cross-Q. 44. Where first?

A. We put our lines in first below and then went above. We put our lines all in together, and rebaited them when they needed it; that is the only way to fish.

Cross-Q. 45. What day was that, and what time of day, that you went to Mr. Drawbaugh's shop?

A. We went there on Thursday, in the morning; it was raining; we had tried to fish in the morning and the creek was too muddy, and we went up to Drawbaugh's shop and got a little seine; we had run out of the bait that we were using.

Cross-Q. 46. Who suggested that you could get a seine at Mr. Drawbaugh's?

A There was no suggestion made about it at all; Hoffman said, "Let us go to Drawbaugh's and see if we can get a seine or a net;" we didn't know that he had a seine, but it was a great place to fish, and we went there with the expectation of getting something there to catch bait with, if it was only a dip-net; they usually have such things around such places.

Cross-Q. 47. Did you get a seine or a net up there, and if yes, from whom?

A. We got a little seine about three yards long from his son—I think it was his son; I don't know whether it was his son or his brother.

Cross-Q. 48. Was this visit of yours to Drawbaugh's shop the first time that, during your twenty-five years' gunning and fishing around that part of the country, you had made Mr. Drawbaugh's acquaintance?

A No, sir; I knew him years before that to speak to when I passed by, but it was the first time I had occasion to go to his shop for anything; for when I went fishing I generally went prepared—took bait from here that I knew I couldn't get there, and always took my own tent when I camped out. I knew him just as I know him now—to speak to when we pass by.

Cross-Q. 49. Did you know any other member of the Drawbaugh family prior to 1873?

A. I don't know as I did, except the young fellow who gave us the seine; I don't know whether he is a son or a brother, or what he is, but they called him Drawbaugh; I got acquainted with him up in Milltown with Dan Wagner; that was the first time I got acquainted with Drawbaugh.

Cross-Q. 50. When was it that you got acquainted with this young Drawbaugh along with Dan Wagner, and who is Dan Wagner?

A. Dan Wagner was the proprietor of the Seven Stars hotel, at the corner of Chestnut and Second streets, Harrisburg; and I went over with him to buy some eels; I can't tell you the exact year.

Cross-Q. 51. Tell us what year it was as nearly as you can—what year, or about what year.

A. I don't know, but I think it was along in 1869 or 1870—somewheres along there, but I am not certain when it was; we used to go over together, and he was a great friend of Chris. Eberly's; and I think it was at the time that Chris. Eberly owned the grist-mill at Milltown.

Cross-Q. 52. I understand, then, that while Christian Eberly was run-

ning the mill in Milltown, you and this Mr. Wagner used to be over there at Milltown every now and then; is that correct?

[*Objected to as new matter, not relevant to the examination-in-chief.*]

A. I don't know whether he was running it, but I think he was the proprietor.

Cross-Q. 53. Will you please name the persons living in or in the neighborhood of Milltown whom you can now recall as persons of your acquaintance?

[*Same objection.*]

A. There was none of them particular acquaintances of mine, but a good many of them knew me from my gunning so much; I knew Christ. Eberly very well—met him almost every day.

Cross-Q. 54. During what period of time was it, and where, that you met Mr. Christian Eberly almost every day?

[*Same objection.*]

A. I met him over on the other side of the river; I met him in Milltown; I met him in Harrisburg; I couldn't tell what years, but for a good many years; he used to live in a large stone house just this side of Milltown; I had occasion to take over a note to him one morning before daylight from a gentleman here.

Cross-Q. 55. A gentleman by the name of Christian Eberly testified as a witness for the defendants in this case, (see pp. 118 to 127, defendants' printed record,) and gave his age as being, at that time, (April, A. D. 1881,) sixty-four; residence, Shiremanstown; occupation, farmer, and formerly resided at Eberly's Mills; is that the Christian Eberly you mean?

[*Same objection.*]

A. Yes, sir.

Cross-Q. 56. And if I understand your testimony, you were quite intimately acquainted with Mr. Eberly both while he lived at Eberly's Mills and after he moved away from there; is that the fact?

[*Same objection.*]

A. Yes, sir; I knew Mr. Eberly very well.

Cross-Q. 57. And if I understand your testimony, you were familiar with the village of Eberly's Mills and the neighborhood, and knew and were known by a number of the residents, and had occasion to be in that

neighborhood every now and then for quite a number of years before 1873. Is that correct?

[*Same objection.*]

A. Yes, sir.

Cross-Q. 58. Have you ever been in Mr. Daniel Drawbaugh's shop since the visit to which you have testified in chief?

[*Same objection.*]

A. I have.

Cross-Q. 59. More than once; and, if yes, how often, and when last?

[*Same objection.*]

A. Two or three times, and about four years ago—four or five years ago—was the last time I was in.

Cross-Q. 60. What was your errand there on your visit four or five years ago?

[*Same objection.*]

A. I had been gunning up around Slate Hill and I got caught in the rain and stopped there until the rain slackened up, and then came home.

Cross-Q. 61. Were your other visits there of the same kind, and about when did they occur?

[*Same objection.*]

A. My other visits occurred several years before that; once I was trout fishing and stopped there for a little while—there is a trout stream runs right by his place; and I think once when I was gunning I stopped there going out; and once when I was out fishing, and had camped out for a week, I fished down as far as Drawbaugh's.

Cross-Q. 62. When was that last occurrence mentioned in your last answer—that is, when you were out fishing, and camped out for a week, and fished down as far as Drawbaugh's?

[*Same objection.*]

A. It may have been 1873, and it may have been 1874, I quit fishing sometime in 1874; I fished several times in 1874, but don't know whether I was down at Drawbaugh's or not; I know I was far enough above that.

Recess until two, P. M.

Cross-Q. 63. Can you tell as certainly whether this fishing excursion was in 1873 or in 1874, or in what month in either of these two years it was? I mean the fishing excursion referred to in cross-question 62.

A. It was in 1873, in August.

Cross-Q. 64. In your answer to cross-question 61 you mentioned several visits to Drawbaugh's shop other than the visit with Mr. Hoffman, as to which you have testified in chief, and among these other visits was one when you were out fishing and had camped out for a week and fished down as far as Drawbaugh's; in your answer to cross-question 62 you say that this may have been 1873, and it may have been 1874; will you give us your recollection, if you have any, as to which of these two years it was, and what month of the year?

[*Same objection.*]

A. The second week after the freshet I was up and fished above Drawbaugh's; and several times that fall I was up and fished above and below Drawbaugh's, and on until September, 1874, when I quit fishing.

Cross-Q. 65. Upon how many of these different fishing excursions do you remember having had occasion to visit Mr. Daniel Drawbaugh's shop?

[*Same objection.*]

A. I couldn't tell that; I may have been there three or four times, but I never had any call to go in there; I merely stopped and spoke to him and went on; when I was fishing I fished for all there was in it; I never put in much lost time.

Cross-Q. 66. You wish us to understand, do you, that such visits as you did pay to Mr. Drawbaugh's shop, other than your visit with Mr. Hoffman, were all after that visit?

[*Same objection.*]

A. Yes; they were all after the visit with Mr. Hoffman.

Cross-Q. 67. Did you make more than one fishing trip up the Yellowbreeches creek in 1873 before September?

[*Same objection.*]

A. Yes; I made three or four.

Cross-Q. 68. Did you make fishing trips up the Yellowbreeches, and into the neighborhood of Milltown in the years 1869, 1870, 1871, and 1872, or any of them?

[*Same objection.*]

A. I did—a good many of them.

Cross-Q. 69. Several of such trips in each of those years; is that it?

[*Same objection.*]

A. Yes, sir; and sometimes I would leave my boat and tent and everything and just take my fish across country and over the bridge, so as to not have the trouble of pushing my boat up the creek again.

Cross-Q. 70. About how long were you and Mr. Hoffman together at Mr. Drawbaugh's shop?

A. About three quarters of an hour, I suppose, or somewhere along there; I was anxious to get the bait, and after we had got the bait we took the seine back and I came away; he stayed there some time, and what transpired I don't know.

Cross-Q. 71. What other things besides talking-machines do you remember seeing at the shop and noticing that day?

A. Nothing in particular that I know of, except his machines that he worked with; I might have paid more attention if I had been a machinist or something of that kind.

Cross-Q. 72. Which way did you enter the shop that day?

A. I went in the front door, that is the only way to go in—unless they have changed it—that I know of.

Cross-Q. 73. Was the door you entered at the side of the building or at one of the ends of the building?

A. On the end of the building facing the hill; I think there were two or three steps going up to it, but I ain't certain.

Cross-Q. 74. You entered on the lower floor, did you?

A. The first floor off of the ground; yes, sir.

Cross-Q. 75. Was it there that you found Mr. Daniel Drawbaugh or the other Mr. Drawbaugh whom you have mentioned?

A. We found the young man there; the old gentleman was upstairs working, I believe. He came down-stairs; whether he was working or not I can't say.

Cross-Q. 76. What was the young man doing when you went in?

A. He was working at something in there—I can't tell you what—amongst the iron.

Cross-Q. 77. Was there anybody else in that part of the shop?

A. No; not until the old gentleman came down-stairs. It is not a big place.

Cross-Q. 78. You say the old gentleman—by whom I understand you to mean Daniel Drawbaugh—came down-stairs; was it then that he mentioned the talking-machine?

A. Then he got talking to Hoffman; that was the time; he said he had a talking-machine.

Cross-Q. 79. Did you and Mr. Hoffman go into any other part of the shop that day than the first floor off of the ground?

A. I did not; Mr. Hoffman did; he went upstairs.

Cross-Q. 80. What were you doing while Mr. Hoffman went up stairs?

A. I was waiting for him to come down-stairs with the little seine.

Cross-Q. 81. Was this after or before you and he were listening at the talking-machine, as you suppose?

A. He went up after.

Cross-Q. 82. To what was the thing at which you listened fixed or attached?

[*Objected to as assuming that it was fixed or attached to anything.*

Objection objected to by Mr. Howson as instructing the witness and improperly interfering with the cross-examination.]

A. I wouldn't like to say positively, but I think it was alongside of a jamb that ran down from the floor above past a window.

Cross-Q. 83. What was the size of the room in which this machine was?

A. I don't think it was over ten by twelve; I don't think it was a very big building anyhow.

Cross-Q. 84. Did you enter that room directly from the outside of the building or how?

A. Yes; we went right into it from the front door.

Cross-Q. 85. Then as you recollect it, this machine was at that time attached to a jamb or something, near a window in a room on the first floor of the building and into which room the front door of the building openly directly; is that correct?

[*Objected to as misstating the witness's testimony who simply said that he thought it was alongside of a jamb.*]

A. As far as my memory serves me that is correct.

Cross-Q. 86. You were in no other room of the building that day?

A. Not that day.

Cross-Q. 87. You have been at other times, I suppose?

A. Yes; I was upstairs.

Cross-Q. 88. When?

A. I think two weeks after that.

Cross-Q. 89. When again after that?

A. I think that was the only time.

Cross-Q. 90. And I understand you to say that you have been in that part of the building which you call the first floor off of the ground a number of times since your visit with Mr. Hoffman?

A. I have been in there frequently; but very often I would find Mr. Daniel Drawbaugh working in a little blacksmith-shop that he had outside; and I would stand and talk to him there.

Cross-Q. 91. I understand that the morning you and Mr. Hoffman visited the place it was raining; did it commence to rain that morning?

A. It commenced to rain on Monday night or Tuesday morning. It rained more or less on Wednesday and on Thursday. It didn't rain very hard all day Thursday, but portions of the day it rained very hard. It rained more or less all the time from Monday night until we came away.

Cross-Q. 92. You have been residing in North street, Harrisburg, how long?

A. I have been residing there for seventeen or eighteen years.

Redirect by Mr. Hill:

Q. Q. 93. Referring to the instrument at which you listened at the time when you and Mr. Hoffman visited Mr. Drawbaugh's shop, did you take that instrument into your hands or lift it off of its seat?

[*Objected to as not re-examination, and as outrageously leading.*]

A. I did not. Mr. Hoffman had his hand on it when I put my ear down to it. I don't know whether he lifted it up, or what he done to it.

Q. Q. 94. Do you know whether it was fastened to its seat or support, or whether it simply rested on it without being fastened?

[*Objected to on the same grounds.*]

A. I can't tell you; I am unable to say about that; I didn't handle it.

Q. Q. 95. Your answer to the sixty-third cross-interrogatory was: "It was in 1873, in August," when you gave that answer did you understand the question as relating to your visit with Hoffman or some other visit?

[*Objected to as leading and incompetent.*]

A. I visited there in 1873 with Hoffman, and also in 1873 without Hoffman.

Q. Q. 96. In cross-answer sixty-one, you stated that, besides the visit with Hoffman, you were at Drawbaugh's shop once when you had been out fishing and camped out for a week, and fished down as far as Drawbaugh's; then the next question—No. 62—inquired when this last fishing excursion was when you camped and fished down as far as Draw-

baugh's, to which you answered, "It may have been 1873 and it may have been 1874;" then followed question sixty-three, which inquired if you could say certainly whether it was in 1873 or 1874, and in what month, to which you answered that it was in 1873, in August; this leaves my mind in doubt whether you understood the question to relate to the visit with Hoffman or whether you meant to state that the other fishing excursion when you camped out and fished down as far as Drawbaugh's was also in August, 1873, and I inquire now in order to have the question settled.

[*Objections continued, and further objected to as especially incompetent in view of Cross-Q.* 64 *and* 65.]

A. I said that the second week after the high water I went up for a week's fishing, and fished down as far as Drawbaugh's; that was after Hoffman and me had been there; it was after the creek had fallen.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 15th day of January, 1884.

FRED. M. OTT,
Examiner.

W. J. MACLAUGHLIN.

JACOB J. MAGLAUGHLIN, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

My age is twenty-four; I reside in Harrisburg, Pa.; I am a painter and paper-hanger; I am a son of William J. Maglaughlin who was examined here to-day as a witness in this case.

Q. 1. Do you know Mr. E. B. Hoffman, of this city, a machinist?

A. Yes, sir; we called him Ras; I don't know whether that is the one or not, as there are a good many Hoffmans.

Q. 2. The one I referred to is thirty-seven or thirty-eight years old and lived, in June, 1881, at No. 1335 Ridge Road, Harrisburg; is that the man you mean by "Ras Hoffman" or not?

A. Yes, sir; that is the man.

Q. 3. Did you ever go off on any expedition with that Mr. Hoffman or not?

A. Yes, sir.

Q. 4. Once or more than once?

A. Once.

Q. 5. Who composed the party that went on that expedition?

A. I don't know who started it first; there was my father and Ras Hoffman and myself.

Q. 6. In what year was that?

A. It was in 1873.

Q. 7. Where did you go and what did you do on that occasion?

A. We went up the Yellowbreeches creek to fish.

Q. 8. How long did you stay up on the Yellowbreeches?

A. From Monday till Friday.

Q. 9. While you were up there where did you sleep at nights?

A. In the tent along the creek.

Q. 10. What kind of weather was it that week?

A. I can't recollect what kind of weather it was—that is, the whole week. On Thursday—I can't just mind whether it was Thursday morning or Thursday noon—it started to rain the heaviest, and rained very heavily the balance of that day and all that night.

Q. 11. Where was your tent pitched at that time?

A. It was pitched at a place that I call a cave. There is a rock projects out, and a space under it running back about twenty feet or so, and our tent was pitched under the overhanging rock to shelter it from the rain. It was just below the flouring-mill and the foot-bridge that these rocks were. I don't know the name of the flouring-mill.

Q. 12. Was the foot-bridge near the flour-mill?

A. Yes, sir.

Q. 13. What effect did that heavy rain of Thursday and Thursday night have on the creek?

A. It raised it very high.

Q. 14. Were you encamped on the Cumberland county side or the York county side of the creek?

A. We camped on the same side that the flour-mill was on—the right-hand side going up.

Q. 15. Did the flood in the creek do any damage or not?

A. It did, so far as my eyes could see—right around me.

Q. 16. What damage did you see?

A. I seen part of the foot-bridge that was right below the flour-mill taken away by part of another foot-bridge that came down from some place.

Q. 17. What sort of stuff, if any, did you see floating along down the creek on the high water?—I mean besides the foot-bridge.

A. There was a big tree came down with the foot-bridge and lots of other rubbish that generally lies along the bottom of a creek.

Q. 18. Did you notice whether or not the flood did any damage along the bottom land?

A. One place—I don't know much about farming, or whether it was damage or not—but at one place the water was running around the corn—roasting ears—and knocking them over; I suppose that was damage to that man; it was right below where we were encamped.

Q. 19. That was the time of year, then, when the corn was carrying roasting-ears, was it?

A. I suppose it was; yes, sir.

Q. 20. Did you roast any ears of corn while you were out on the fishing excursion?

[*Objected to as leading, the objection to apply to the preceding question also.*]

A. Not to my recollection, we didn't—not as I know of.

[*Deposition objected to as not rebuttal, and cross-examination, de bene esse, by Mr Howson.*]

Cross-Q. 21. When was your twenty-fourth birthday?

A. The 2d of last October.

Cross-Q. 22. Have you been in the habit of going with your father on fishing and hunting excursions every now and then?

A. Yes, sir; wherever he went I went.

Cross-Q. 23. Then you have been on a good many fishing expeditions with him up the Yellowbreeches creek?

A. Yes, sir.

Cross-Q. 24. Give me the time, as nearly as you can, of any of these other fishing expeditions that you particularly remember—I mean any other than the one you think took place in the year 1873.

[*Objected to as new matter not relevant to the examination-in-chief.*]

A. It was all before 1873; that was the last time I was up the creek fishing.

Cross Q. 25. That don't answer my question; what I wish you to do is to give me the time, as nearly as you can remember, and the circumstances of any other fishing expedition which you now remember to have made with your father up the Yellowbreeches creek besides the one which you think took place in 1873.

[*Same objection.*]

A. I just can't recollect about that there; I was young when I was

up there; that is where I have spent most of my days—not just at the creek, but on the water. I can't recollect the circumstances or the days, although I know I was there.

Cross-Q. 26. I understand you to say that as long as your father was in the habit of fishing up along the Yellowbreeches creek it was your habit to be with him is that the way you wish to be understood?

A. No, sir; I suppose he has fished up the creek before I was born; of course I wasn't with him then; I was about eight years old when I first started out to go with him; that may not just have been the first start, up the Yellowbreeches creek.

Cross-Q 27. Since you were eight years old or thereabouts and so long afterwards as your father was accustomed to take fishing trips up the Yellowbreeches creek you were accustomed to go with him; is that correct?

A. Yes, sir.

Cross-Q. 28. And I understand it to be your recollection that the last of these fishing trips which you and he took up the Yellowbreeches was that referred to in your direct examination, and which you think was in 1873; is that correct?

A. Yes, sir.

Re-direct by Mr. Hill:

Q. Q. 29. With whom did you learn your trade?

A. Father.

Q. Q. 30. How old were you when you began to learn your trade?

A. As near as I can recollect, I was between twelve and thirteen years.

Q. Q. 31. What season of the year did you commence to learn your trade?

[*Objected to as not re-examination.*]

A. It was in the spring.

Q. Q. 32. You were twelve years old the second day of October, 1871, were you?

A. Yes, sir; I think that would be correct.

[*Objection continued.*]

Q. Q. 33. Did you commence to learn your trade in the spring of 1872?

[*Objection continued, and also objected to as leading.*]

A. I went to my trade after I was twelve years old—the spring following that—I suppose that would be it.

Q. Q. 34. That would make it the spring of 1872. How long after you commenced to learn your trade was it that you went with your father and Mr. Hoffman up the Yellowbreeches fishing?

[*Objected to as not re-examination, and also as assuming and leading.*]

A. The next summer—or fall—or whatever you may call it.

Q. Q. 35. Do you mean the summer of the same year in which you commenced to learn your trade in the spring, or of the next year?

[*Same objection.*]

A. The next.

Re-cross by Mr. Howson:

Re-cross-Q. 36. Are you living at home with your father?

A. Yes, sir.

Examination taken, reduced to writing, and by the witness sworn and subscribed to (by making his mark) before me, this 15th day of January, 1884.

FRED. M. OTT,
Examiner.

his
JACOB J. × MAGLAUGHLIN.
mark.

Adjourned till January 16, 1884, at 10, A. M.

January 16, 1884.

Examination resumed pursuant to adjournment.

Present, same counsel.

JOSEPH GENSINGER, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

My age is forty; residence, Marysville, Perry county, Penna.; occupation, laborer.

Q. 1. Were you ever in the butchering business?

A. Yes, sir; I was.

Q. 2. If you are able to fix about the time when you commenced the butchering business, please tell us when it was, and how you are able to fix the date when you first engaged in it.

A. I bought Mr. Henry Gamber out July 9, 1878; I have got the date here in a book, and know this to be correct.

[*Witness produces book.*]

Q. 3. Who made these entries in this book which you have produced here?

A. I did myself, sir.

Q. 4. Will you point out the first entry in the book that you made when in the butchering business, and tell us when you made it?

A. I sold George Kocher meat on the 9th of July, 1878.

[*Witness points to the following entry in the book*:

"July 9,
George Kocher, 1878,
9 meet. 56."]

Q. 5. There are a great many entries in this book after that date, and running along through July, August, September, and into October, 1878, occupying between fifty and sixty leaves of the book; what kind of business do these entries relate to?

A. Butchering.

Q. 6. In whose possession has that book been ever since July 9, 1878?

A. It has been in my possession.

Q. 7. I believe you were at one time tax-collector for Marysville borough, were you not?

A. Yes, sir.

Q. 8. When were you tax-collector of that borough?

A. In 1875.

Q. 9. Were you never tax-collector there afterwards?

A. No, sir.

Q. 10. What tax did you have put in your hands for collection in 1875—the school-tax, or borough tax, or what?

A. School, building and borough.

Q. 11. If you have the warrant which was issued to you authorizing you to collect either of those taxes that year, will you please produce it in order that it may be copied on to the record by the examiner?

A. I have; here it is.

[*Witness produces the following paper*:

PERRY COUNTY, } *ss*:
Marysville district. }

To Joseph Gensinger, collector of Marysville School-District, in said county. These are to authorize and require you to demand and receive of and from every person named in this annexed duplicate of school-tax of said district, the sum wherewith such person stands charged, and pay

the same to Jacob Zang, treasurer of said school-district, and his successors in office, on or before the . . . day of . . . . . next, at which time abatement or allowance for mistakes or indigent persons or unseated lands, will be made by the board of school-directors as may appear just and reasonable; and on or before the . . day of . . . . . next you will pay into the hands of said treasurer, the whole amount of the taxes charged and assessed in the annexed duplicate, without further delay except such sum as the said directors may in their discretion exonerate you from. And if any person shall neglect or refuse to make payment of the amount due by him for such tax within thirty days from the time of demand, so made, it shall be your duty, the collector aforesaid to levy such amount by distress and sale of the goods and chattels of said delinquent, giving ten days' public notice of such sale by written or printed advertisements: and returning the overplus (if any there be) to the owner, and in case goods and chattels sufficient to satisfy the same with the costs cannot be found, you are hereby authorized to take the body of such delinquent and convey him to the jail of the proper county, there to remain until the amount of such tax, together with the costs shall be paid or secured to be paid or until he shall be otherwise discharged by due course of law. *Provided* that nothing herein contained shall authorize the arrest or imprisonment for non-payment of any tax, of any female or infant, or persons found by inquest to be of unsound mind. Hereof fail not.

Given under my hand and seal at Marysville, the 16th day of July, A. D. 1875, Pres. Sig. J. D. Miller, [SEAL,] Prest. of Board School Directors, Marysville District.

Countersigned Sec. Sig. Secretary of the Board.]

Q. 12. This warrant, authorizing and requiring you to collect the school-tax, is dated July 16th, 1875; is this the original paper under authority of which you made your collections of school-tax?

A. Yes, sir.

Q. 13. Have you here any of your duplicate tax-books for that year?

A. I have the school and building duplicates, which are both combined in one book; and I have the borough duplicate in another book.

[*Witness produces both books.*]

Q. 14. Will you please refer to your two duplicate tax-books which you have here produced, and state whether the name of Thomas Draper occurs as one of the taxpayers of the borough, and, if so, state whether the tax was upon real or personal estate, and what the valuation of the property was, and what was the amount of the tax or taxes.

A. Thomas Draper's name is on both books. He is taxed for real estate valued at $6,000. The school tax is thirty-six dollars, and his building tax is thirty-six dollars. His borough tax is twenty-four dollars.

Q. 15. Did you collect that tax on the Draper property?

A. Yes, sir; I did.

Q. 16. From whom did you collect it?

A. From George Kissinger, who lived on the property at the time.

Q. 17. When and where did you first see Mr. Kissinger with reference to the collection of those taxes?

A. I went around to see everybody that was taxed to notify them as soon as the duplicates were placed in my hands. I went up and saw Mr. Kissinger at his house where he lived.

Q. 18. Your school-tax warrant is dated July 16, 1875; how long after the date of that warrant was your visit up to Mr. Kissinger's house, when you went to notify him?

A. It was the latter part of July or the beginning of August, 1875, that I went to notify him.

Q. 19. Did you see Mr. Kissinger when you went up there to notify him at that time?

A. Yes, sir.

Q. 20. Where did you find him, and what was he doing?

A. I found him down at the side of the barn, in the barn-yard; he was boring wooden pipes—that is, making them.

Q. 21. Am I to understand you that he was in the barn-yard where the cattle were herded?

A It is a barn-yard, of course; it is at the lower side of the barn; the cattle could go there, of course; you might call it a barn-yard; it was at the lower side.

Q. 22. On what side of the barn was it that you found him boring wooden pipes?

A. On the side the spring was on—on the left-hand side as you go from the house towards the barn.

Q. 23. Tell us what conversation you had with Mr. Kissinger, if any, on the day you went to notify him about the collection of the tax.

A. I asked Mr. Kissinger who I was to look to for the tax—whether I was to look to Draper or to him. He told me I was to get the tax from him (Mr. Kissinger). I asked him what he was making. He said he was going to make pipes; that they were going to put in a ram to force the water up to the house. I asked him what that was. He told me it was something to throw the water up to the house. I said, "That will make it handy for you." That was all, as far as I know, at that time.

Q. 24. During that conversation were you standing all the time or not?

A. I was sitting on a log that he was boring, or that he had been boring, rather—the log that he was boring.

Q. 25. When you got there where he was, did you find him boring or not?

A. He was boring at the time that I got there.

Q. 26. When you arrived there and sat down on the log, what did he do?

A. He sat down on the log.

Cross-examined by Mr. Howson:

Cross-Q. 27. How long after July, 1878, did you continue the butchering business?

A. I butchered the best part of the year; I can't tell you exactly the date when I quit butchering.

Cross-Q. 28. Until the following winter?

A. I butchered through the winter—the best part of the winter.

Cross-Q. 29. Then, until the last of the year 1878 or the early part of the year 1879?

A. I butchered until in 1879 somewheres.

Cross-Q. 30. Have you ever occupied any public office at all other than that of tax-collector in and around Marysville?

A. I have—constable.

Cross-Q. 31. When were you constable, and how long?

A. I was elected in 1875—I was sworn in in 1875—I made a mistake, I mean I was sworn in 1875.

Cross-Q. 32. And you continued to hold that office how long?

A. Two years.

Cross-Q. 33. What time in 1877, then, did you vacate that office?

A. I can't tell now right; it was the beginning of the year, of course; I don't know whether it was January or February; I couldn't give you the date—couldn't tell you the month.

Cross-Q. 34. During the two years that you were constable, did you carry on any business of any kind or do any work besides your duties as constable and tax-collector?

A. I worked some—yes, sir; labored.

Cross-Q. 35. What were you doing between the time when you quit as constable in 1877 and the time in 1878 when you went to butchering?

A. Working aronnd town at labor.

Cross-Q. 36. Then, since 1875, with the exception of the performance of duty as constable and as a collector of taxes, and excepting also the short time during which you were butchering, you have been working as a day laborer in and around Marysville; is that correct?

A. Yes, sir.

Cross-Q. 37. Were you personally acquainted with Mr. Kissinger before your visit to him with regard to the collection of the taxes, and if yes, for how long a time before?

A. I wasn't just personally acquainted with him at that time.

Cross-Q. 38. During the time you were butchering, did you take meat around in a cart or wagon and serve customers living outside of Marysville?

A. I served them outside of the town in a wagon.

Cross-Q. 39. Wasn't Mr. Kissinger one of the customers whom you so served?

A. Yes, sir; you will find his name there [referring to the butchering account book which Mr. Howson had taken in his hand].

Cross-Q. 40. The butchering account book referred to shows that you delivered meat at Mr. Kissinger's at various times between the 13th of July and the 19th of October, 1878; does it not?

A. Yes, sir.

Cross-Q. 41. Does this book which you have produced contain all the accounts in your butchering business; or was there not a later one?

A. There was another one; 'Squire Fenn has that.

Cross-Q. 42. When did that other one get into 'Squire Fenn's hands, and for what purpose?

[*Objected to as immaterial and irrelevant to the examination-in-chief and to the issue.*]

A. For collection—the date I can't tell.

Cross-Q. 43. Did you continue to serve Mr. Kissinger with meat until you quit butchering, some time in 1879, as you have stated?

A. I did.

Cross-Q. 44. If I understand your testimony, your recollection is that you found Mr. Kissinger engaged in boring logs in the barn-yard to the left of the barn (looking at it from the house), and a part of the barn-yard near the spring. Is that the way you wish to be understood?

A. Yes, sir; that is right.

Cross-Q. 45. How much wood or log pipe did you notice lying around on that occasion?

A. That question I couldn't answer, because I don't know; I didn't look—didn't take particular notice.

Cross-Q. 46. Was the log you sat on lying on the ground, or how was that?

A. It was up on two trestles.

Cross-Q. 47. How high were those trestles?

A. Maybe two feet.

Cross-Q. 48. Who, besides Mr. Kissinger, did you see and converse with on the Draper farm that day?

A. Mrs. Kissinger.

Cross-Q. 49. How long were you conversing with Mr. Kissinger that day?

A. That is pretty hard for me to tell; I couldn't say; I might have been sitting there an hour and maybe not.

Cross-Q. 50. Had you any occasion to see Mr. Kissinger again in 1875, after that visit?

A. I seen him several times down in the town of Marysville.

Cross-Q. 51. Didn't you see him again on his farm that year?

A. I don't think I did.

Cross-Q. 52. Did you see him on his farm during the year 1876?

A. I did.

Cross-Q. 53. More than once; if yes, how many times?

A. I worked for him some.

Cross-Q. 54. What work did you do for him, and whereabouts on the farm?

[*Objected to as immaterial and irrelevant to the examination-in-chief.*]

A. I made hay; it is pretty hard for me to think now just in what field; I worked several times for him—in different years.

Cross-Q. 55. How long were you making hay for Mr. Kissinger in 1876?

[*Same objection.*]

A. Four or five days, I suppose it may have been.

Cross-Q. 56. During this time did you take any meals at Mr. Kissinger's house?

[*Same objection.*]

A. I did.

Cross-Q. 57. Did you do some work for him in 1877; and if yes, what work, and at what time of year?

[*Same objection.*]

A. I don't know whether I did any work for him in 1877; I did some for him in 1879.

Cross-Q. 58. Did you do any work for him in 1876 besides the making hay, if you recollect?

[*Same objection.*]

A. I worked a couple of days for him, I think, cutting wheat and oats.

Cross-Q. 59. In what month, or about what month, would that be?

[*Same objection.*]

A. That would be in July.

Cross-Q. 60. On that occasion, also, you took meals at Mr. Kissinger's house?

[*Same objection.*]

A. I did.

Cross-Q. 61. Do you recollect whether or not you did any work for Mr. Kissinger in 1876, before you went to butchering?

[*Same objection.*]

A. I don't recollect of any.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 16th day of January, 1884.

FRED. M. OTT,
Examiner.

JOSEPH GENSINGER.

Respondents' counsel offers in evidence as "Exhibit U. S. Patent Office Certificate," a certificate dated Nov. 14, 1883, sealed with the Patent Office seal, and signed "Ben. Butterworth, Commissioner," which he requests the examiner to copy upon the record at this point.

[*A proffer of the certificate objected to by Mr. Howson as incompetent, immaterial, and not rebuttal.*]

The certificate is as follows:

"2-175.

Department of the Interior,
United States Patent Office.

To all persons to whom these presents shall come, greeting:

"This is to certify that a careful search has been made of the records of this office, and no applications appear to have been filed by Daniel Drawbaugh as attorney, or associate attorney, or as his own attorney, from January 1, 1870, to January 1, 1880, inclusive.

"In testimony whereof, I, Benj. Butterworth, Commissioner of Patents, have caused the seal of the Patent Office to be affixed this 14th day of November, in the year of our Lord one thousand eight hundred and eighty-three, and of the independence of the United States the one hundredth and eighth.

{Seal of the U. S. Patent Office.}

BENJ. BUTTERWORTH,
Commissioner."

Adjourned until January 17, 1884, at 10 A. M.

January 17, 1884.

Examination resumed.

Present same counsel.

THEOPHILUS FENN, *being produced, affirmed, and examined, saith:*

Examined by Mr. Hill:

My age is 29; I reside at 335 Queen street, Philadelphia; I am a commercial salesman for Baxter C. Swan; I never sign my name "Theopilus;" I always have signed it "Theo. Fenn;" as long as my father lived I always signed it "junior," but since his death I don't sign it "junior."

Q. 1. Are you a son of 'Squire Theo. Fenn, formerly of Marysville, now dead, and a brother of 'Squire William K. Fenn, now of Marysville?

A. Yes, sir.

Q. 2. When did you leave Marysville and take up your residence permanently at Philadelphia?

A. My engagement commenced on the first day of January, 1879, and has been continuous ever since. I left Marysville for Philadelphia on the Saturday previous to the first Monday of January, 1879, and have resided there ever since.

Q. 3. Had you always lived in Marysville up to the first of January, 1879?

A. No, sir.

Q. 4. Where had you lived for the five years last prior to the first of January, 1879?

A. In the fall of 1874—I think it was in September—my father's family moved from Harrisburg to Marysville; I lived continuously in Marysville from that time to the Saturday previous to the first Monday of January, 1879. Previous to that—from March, 1874, to September, 1874, I think—I lived in Harrisburg, with my father's family. From September, 1873, until March, 1874, I was assistant book-keeper for Swan, Clark & Co., Philadelphia.

Q. 5. When did your father die?

A. April 29th, 1883, 9.35 A. M.

Q. 6. While your father was living in Marysville, did he own a farm near that village?

[*Objected to as irrelevant, immaterial, and importing issues too remote into the case, the objection to apply to all succeeding questions upon the same line of inquiry.*]

A. No, sir.

Q. 7. Did any member of your father's family own one?

A. My mother did; the title was in the name of Margaret D. Fenn

Q. 8. Do you know when that farm was sold, and to whom?

A. In the early portion of 1878, to Abner Cassell; I think it was sold in February.

Q. 9. After the farm was sold to Cassell, did he move on to it and live on it; and if so, how soon after his purchase of it?

[*Objected to on the same grounds, and also as not inquiring for the best evidence.*]

A. Never, to the best of my knowledge; he got possession of it on April 1st, 1878.

Q. 10. Who farmed that farm for the last two or three years before your mother sold it to Mr. Cassell?

A. From the first of April, 1875, until the first of April, 1876, it was farmed by John H. Harper and Christian McAllister for my mother. It was divided into two distinct farms, having two tenant-houses and two barns, and Harper farmed one of these parts and McAllister the other. From the first of April, 1876, I rented the two farms from my mother until the first of April, 1877; and I sub-letted the farm that Christian McAllister had lived on the year previous to John Leonard, who farmed that farm for me, I farming the front farm

—the one John H. Harper had farmed the year before—Mr. Harper being my working-tenant and I boarding with him. From the first of April, 1877, to the first of April, 1878, the farm was rented to George W. Crossley and John Leonard. Mr. Cassell took possession of it April 1, 1878.

Q. 11. How long, and when, did John H. Harper live on that farm?

A. He lived continuously from April 1, 1875, to April 1, 1877; and he never lived there after that.

Q. 12. You state that you farmed that farm from the first of April, 1876, to the first of April, 1877. Did you ever farm that farm after that, or not?

A. No, sir.

Q. 13. When you took that farm, on the first of April, 1876, was there a wheat crop growing on the farm, sowed the fall before?

[*Objected to on the same ground, and as leading.*]

A. Yes, sir.

Q. 14. Did you take that wheat crop, or did it remain the property of the person who farmed the farm the year before?

A. The wheat crop was the property of my parents; I harvested, threshed, and delivered that wheat crop for one third of it.

Q. 15. During the year that you ran the farm, did you put in a wheat crop in the fall of 1876?

A. I didn't run it; I farmed it; I did put out a wheat crop in the fall of 1876.

Q. 16. When you gave up the farm on the first of April, 1877, what became of that wheat crop, and who owned it after you gave up the farm?

A. I left it there and I owned it; I left it there until it was fit to harvest; I harvested it, threshed it, and sold it.

Q. 17. Are you able to fix the time when you sold that wheat crop which was left on the farm in the spring of 1877, when you gave up the farm?

A. I shipped it on the 8th day of August, 1877, and I was paid for it on the 10th.

Recess until 2.15.

Examination of Theophilus Fenn continued by Mr. Jacobs:

Q. 18. To whom did you sell the wheat crop harvested by you in 1877?

A. To John Hoffer, of Harrisburg.

Q. 19. Have you any knowledge of the fact of John H. Harper taking a breed-sow up to the farm of Thomas Draper, occupied by George W. Kissinger, at any time whilst Mr. Harper lived upon your mother's farm? If so, when was it, and how did you come to know about it?

[*Objected to on grounds previously stated, and also as leading.*]

A. It occurred, I think, in October, 1875; my knowledge of it happened in this way: The sow in question was black; the only seed hog that was black in that county was owned by George W. Kissinger, to my knowledge; as near as I can recollect, my knowledge of it happened from the cause I have specified; we desired to raise black hogs and Mr. Kissinger had the only black seed-hog in the neighborhood.

Q. 20. My question inquired how you came to know that Mr. Harper had taken the breed-sow to Mr. Kissinger's. What was your means of knowledge—was it report or observation, or what?

[*Objected to as already answered, and also objected to as leading.*]

A. I saw him start with the sow, and saw him return with the sow; and he informed me that she had been served; and she got pigs after it.

Q. 21. What became of those pigs?

A. They were appraised to me with the sow on the 31st day of March, 1876; I butchered them on the 12th day of December, 1876; that is according to my book, as near as I can get at it; this date of the butchering I take from my book.

Q. 22. Will you please produce your book and point out to the examiner the entries on which you rely to fix those dates?

A. Yes, sir. [The witness produces book.] I fix the date of the butchering from the fact that I paid my butcher, whose name was Willard, as appears from the book; I paid him the very day he did the work, and I also bought pepper, salt, and saltpetre the next day, as is shown by said book. The sow was appraised to me with four pigs; one of them died and I butchered the other three.

[*The entries referred to are as follows:*

From page 36:

"1876 [*at top of page.*]

* * * * * * * * *

Dec. 12.	Willard for butchering,	1.50
13.	Pepper, Salt, Salt Peter,	1.40"

From page 91:

"Articles appraised By Joseph Sadler, Leonard Swartz and Oliver Miller, Mch. 31, 1876.

* * * * * * * *

Sow with pigs. 4 20.00"]

Q. 23. Are you acquainted with Edward Crist, of Marysville?

A. Yes, sir.

Q. 24. Did you ever have anything to do with getting him a situation anywhere? If so, please state the circumstances under which you did so.

A. Yes, sir; I did; I assisted Edward Crist to get a situation in the State of New York; I read an advertisement in the *Country Gentleman*, in the spring of 1877, desiring to employ a man to take charge of cattle, by a party of the name of Bullock, New York city, to whom I wrote in the interest of Edward Crist, receiving a reply by telegraph for him to come on; but, while these negotiations were going on, Crist went West, or was about to go West, and could not accept it. He returned, I think, about the first part of July, as near as I can remember, when I again opened up the correspondence, receiving a telegram requesting him to come on to New York for interview with Mr. Bullock; I believe he secured the situation.

Q. 25. Did Edward Crist ever work for you? If so, when?

A. Yes, sir; he did work for me. [Witness refers to book.] He commenced to work for me on May 20th, 1876, and worked for me until March 20th, 1877, inclusive, according to my book. He worked probably two or three days, at odd jobs, before May 20th, 1876, but he was continuously in my employ between those dates.

Q. 26. Are you acquainted with James Champion, who formerly resided in Marysville?

A. Yes, sir.

Q. 27. Did he ever work for you; and if so, when?

A. [Witness refers to book.] In 1876. Previous to September 28, 1876, according to my book. He worked four and three quarter days for me. He also worked for me on Sept. 28, 29, and Oct. 9, 1876; and he is credited with one and one quarter days on September 29th, marked by me "forgot." I believe this is a record of the work he done for me, according to my book, in 1876.

Q. 27. Are you acquainted with Alexander Costly, or Crossley, a colored man living in Marysville?

A. Yes, sir.

Q. 28. Did he ever work for you, and if so, when?

A. Yes, sir; from April 1, 1876, to March 27, 1877.

Q. 29. Where did he live at that time?

A. In a small tenant-house on the farm I sublet to John Leonard.

Q. 30. It is in evidence in this case that a hydraulic ram was put in upon the farm of Thomas Draper, within the limits of the borough of Marysville, during the time that George W. Kissinger occupied said farm as tenant, the purpose of said ram being to force water from the spring to the house in which Mr. Kissinger lived; will you tell us whether you ever saw said ram, and if so, when and under what circumstances you first saw it?

A. I did see it, in the fall of the year, either in 1876 or 1877, to the best of my knowledge and belief; the circumstances, as near as my recollection will guide me, is this: I called at George W. Kissinger's farm on some business—what it was then I can't now remember—when Mr. Kissinger called my attention to the ram and showed it to me.

Q. 31. Did you or not examine the working of the ram or make any inquiries about it; if so, please state what took place between you and Mr. Kissinger?

A. I did make inquiries about it, but did not touch nor examine it.

Q. 32. Did you notice whether or not the ram was working at the time?

[*Objected to as leading and as incompetent in view of the last answer.*]

A. I think it was not working, but Mr. Kissinger started it.

Q. 33. How did it work after he started it?

[*Objection continued, and also objected to because it does not appear that the witness is qualified to answer the question.*]

A. To me apparently poor.

Q. 34. Did you see any pipes connected there with the ram at that time?

[*Objected to as a leading and improper mode of inquiry.*]

A. What kind of pipes?

Q. 35. Any pipes at all.

A. Yes, sir.

Q. 36. Will you please state what kind of pipes you saw, and how they were located and arranged?

A. I saw a gas-pipe that led from the ram towards Kissinger's house, and that apparently was attached to the ram; and when the ram

was started a very small stream of water would issue from the end of the gas-pipe nearest Kissinger's house; when the ram would be stopped no water would issue from that end of the pipe. I also saw the end of a large wooden pipe that Mr. Kissinger explained to me fed the ram with water from a spring located south-west of the ram.

Q. 37. Will you describe the end of the gas-pipe next to the house, at which the water issued?

A. To my mind it was a perfectly straight piece of gas-pipe, raised up and resting on the tines of an old barrel sawed in half, or a water-tight box; what I mean by the tines were the staves. The half-barrel or box —I can't call to mind which of the two it was—was resting on the ground. I shouldn't suppose the thing could hold more than a bushel and a half to two bushels.

Q. 38. Will you give us some idea of the size of the stream that issued from the end of the pipe when the ram was started?

[*Objected to as immaterial and asking for guess-work.*]

A. As near as I can remember it was about the size of a goose-quill tooth-pick; probably it might have been a little larger.

Q. 39. Did Mr. Kissinger, or not, make any explanation to you as to the small size of the stream which you have described?

A. He did; he said that the pipes were old, and had frozen and bursted, and he would have to get others, when he expected the ram to do better service, as the pipe would not lose its water then; I refer to the gas-pipes.

Q. 40. Did you, or not, make any inquiry of Mr. Kissinger at that time with regard to the cost of putting in a hydraulic ram?

[*Objection continued.*]

A. I did.

Q. 41. For what purpose did you make that inquiry?

[*Objected to on the same ground and as incompetent.*]

A. For the purpose of putting in a ram on the farm owned by my mother to supply stock with water at the front farm barn.

Q. 42. Do you refer to the farm owned by your mother concerning which you have heretofore testified, and which was sold to Mr. Cassel in the spring of 1878?

[*Objected to as leading.*]

A. I do.

Q. 43. In your 30th answer, you have testified that you did see the ram at Kissinger's in the fall of the year, either in 1876 or in 1877, to the best of your knowledge and belief; will you please state what circumstances led you to fix the date when you saw it as in one of these two years?

[*Objected to, the witness having already given his recollection of the matter inquired of in his answer to the 30th interrogatory, and having there stated that he called at Mr. Kissinger's farm on some business—what, he couldn't say.*]

A. Because the knowledge of the cost of the ram would not have been worth the asking for after the year 1877 to me.

Q. 44. Why would it not have been worth the asking for after the year 1877?

[*Objected to as argumentative and incompetent.*]

A. Because my mother's farm was sold in February, 1878; I thought that probably I might get the title to mother's farm in my name; that is the reason.

Q. 45. Do you remember a visit to Marysville made by a commission appointed by the Governor of Pennsylvania to locate a site for a new penitentiary to be called the middle penitentiary?

[*Objected to as immaterial, irrelevant, and not rebuttal.*]

A. I do.

Q. 46. When was that visit made?

[*Objected to on the same grounds, and as not inquiring for the best evidence.*]

A. I think, about the middle of September, or somewhere thereabouts, in 1878.

Q. 47. Did you or not, together with other citizens of Marysville, accompany the members of that commission when they went to look at several proposed sites near Marysville for said penitentiary?

[*Objection continued.*]

A. I did.

Q. 48. Where did you go with them?

[*Objection continued.*]

A. I accompanied them to the front portion of Mr. Abner Cassell's front farm, formerly owned by my mother, and then occupied by a man

of the name of Remer—his first name I don't know—who was Mr. Cassell's farmer, and from there to a tract of land owned by a man by the name of Reiff living in Philadelphia.

Q. 49. When you arrived at Mr. Cassell's farm, did you or not have any conversation with any members of the commission with regard to the supply of water in case the penitentiary should be located there?

[*Objected to as immaterial, irrelevant, and incompetent.*]

A. I was asked by one or more of the commissioners what prospect they could expect on that tract to supply the penitentiary, if located there, with water. I replied that there was two methods—they could sink an artesian well, or have a never-failing supply from Fishing creek by hydraulic ram-power or steam, showing them Mr. Seidel's upper dam, with a very large expanse of water caught from the said Fishing creek.

Q. 50. Did you, at the time of that conversation, mention, or have in mind, any particular hydraulic ram which was then in use in the neighborhood?

[*Objected to on the same ground, and as leading.*]

A. Yes; my mind reverted to the Kissinger ram, to the best of my knowledge and belief; but I did not mention the Kissinger ram.

Q. 51. Will you please state again in what year it was that you assisted Edward Crist to get a situation with Mr. Bullock?

A. In the spring of 1877—when I first commenced to endeavor to get him a situation.

Q. 52. Through what office did you receive the telegrams in reply to your letter to Mr. Bullock?

A. To the best of my knowledge and belief, through the Western Union service. Marysville, at that time, had two offices—one near the round-house, and the other near the upper bridge; I think likely I received my information from the office near the upper bridge.

Q. 53. Did you preserve that telegram?

A. I did until about a year ago, when I destroyed all outside correspondence of that character.

Q. 54. Will you go to the office at Marysville and procure copies of said telegrams if you can, and have them here at your examination this evening?

A. I will endeavor to do it.

(Recess until 8, P. M.)

Witness made the following statement:

"I made a mistake in my former testimony as to the time I endeavored to secure or obtain a situation for Edward Crist; I stated that it was in 1877, when I should have stated, and knew, that it was in 1878; the reason of my knowledge is that the correspondence between Mr. Bullock and myself occurred while I lived at home in my father's family, which was from late in the fall of 1877 until I left for Philadelphia in 1878; the other portion of 1877, from the time I left the farm, April 1st, 1877, until I went to live with my father in the fall of 1877, I boarded with John H. Harper, in one of the Pennsylvania Railroad Company's stone-houses at the then upper station at Marysville."

Examination continued by Mr. Jacobs:

Q. 55. Have you complied with the request contained in my 54th question; and if so, with what result?

A. To the best of my ability I did; I could only secure a record or a copy of the messages referred to, in this shape:

Telegram delivered to me according to their book, from J. Bullock, New York, in April, 1878, of twelve words—no record of what the words were; also, one in July, 1878, from the same person to me of seventeen words. There is no specified date of the day of the month in either case.

Q. 56. You have spoken in your 21st answer of an appraisement made to you on the 31st day of March, 1876, and have referred to an entry of the same in your book, which entry the examiner has copied upon the record; will you tell us how long after that appraisement was made you went into possession of your mother's farm?

A. The following day—April 1st, 1876.

Cross-examination, de bene esse, by Mr. Howson:

Cross-Q. 57. What was your occupation from the time you quit farming until you moved to Philadelphia?

A. From the time I quit farming until I went to live with my father, I was engaged in no special business; after I went to live with him I done his clerical work in the office until I went to Philadelphia.

Cross-Q. 58. During this period of time, from the time you quit farming until you went to Philadelphia, didn't you periodically pay visits to Mr. Kissinger and his family, or some of them, at the Draper farm?

A. I did not pay visits to Mr. Kissinger periodically.

Cross-Q. 59. Did you, during the time mentioned, pay Mr. Kissinger or any of his family more than one visit?

A. I cannot remember of ever paying Mr. Kissinger or any of his family specially a visit in that time.

Cross-Q. 60. If you did not specially visit Mr. Kissinger or any of his family, did you, during the period of time mentioned, visit more than once the property on which Mr. Kissinger was living?

A. I may have been on the property.

Cross-Q. 61. Are we to understand from your answers that you have no positive recollection of being on that property more than once during the period I have named?

A. I can remember of but once.

Cross-Q. 62. Can you tell us what day of the week it was, and about what time of the day, that you paid Mr. Kissinger the particular visit testified to by you in chief?

A. To the best of my knowledge and belief it was on Sunday.

Cross-Q. 63. Please name the persons, if any, who were with you at Mr. Kissinger's place that day, and also the members of Mr. Kissinger's family whom you met there that day.

A. It may have been probable that Mr. Harper was with me that day; I can't for certain say; I refer to John H. Harper; to the best of my recollection, the only members of Kissinger's family that I saw was Mr. Kissinger and Mrs. Kissinger.

Cross-Q. 64. Have you now no recollection whatever of having met any of the members of Mr. Kissinger's family on the Draper farm during the period I have been inquiring about?

A. Not to my recollection.

Cross-Q 65. Whereabouts was this end of wood pipe which you say you saw on the particular visit which you have testified about?

A. At the water-escape to the spring.

Cross-Q. 66. Whereabouts was that spring?

A. On the farm occupied by Mr. Kissinger.

Cross-Q. 67. The meaning of my question was—and no doubt you understood it—on what part of the farm occupied by Mr. Kissinger?

[*The imputation contained in the question objected to as unwarranted.*]

A. As near the center of the arable portion of that farm as my judgment could possibly put it—of that portion lying north of the public road.

Cross-Q 68. What was the length of the gas-pipe that you have referred to as having noticed on that day?

A. I should judge that I saw probably four hundred feet to five hundred feet of gas-pipe.

Cross-Q. 69. How was this four or five hundred feet of gas-pipe situated—lying on the ground, or raised, or sunk, or how?

A. To the best of my recollection, it laid on top of the ground.

Cross-Q. 70. And if I understand your testimony, you traced it from its connection with the ram to the point near the house where it discharged the stream of water that you testified about. Is that correct?

A. I walked alongside of it on the road.

Cross-Q. 71. Had you any particular personal acquaintance with Mr. Kissinger before this visit to him of yours on some piece of business—you don't recollect what?

A. I have known Mr. Kissinger previous to that for a number of years.

Cross-Q. 72. What members of Mr. Kissinger's family, other than himself, were you acquainted with at, and prior to, the time when you moved from Marysville to Philadelphia?

A. By sight, I knew three of his daughters, and three sons, and his wife, and himself.

Cross-Q. 73. Don't you recall any other members of his family whom you knew?

A. I do not; that is, of his own immediate family.

Cross-Q. 74. Please name any persons you know, connected with Mr. Kissinger, but yet not belonging to his immediate family, as you understand it?

[*Objected to as immaterial and irrelevant.*]

A. James Zimmerman, a son-in-law of Mr. Kissinger's, and I think that probably he [Zimmerman] had a couple of children at that time; I included Mrs. Zimmerman in the three daughters of Mr. Kissinger, whom I mentioned before.

Cross-Q. 75. What time in the fall, according to your recollection, was it that you paid this visit to Mr. Kissinger and saw the ram?

A. It was late in the fall—frost had set in; I cannot remember the month; it was cold, and the ground had been frozen; I remember being bundled up pretty well.

Cross-Q. 76. How long have you known, Mr. Fenn, about the in-

quiry which has been going on concerning the putting in of the Kissinger ram, and from whom did you first hear of it?

A. The first I heard of this matter, to the best of my knowledge, was last July, on my vacation, when I visited my brother, W. K. Fenn, at Marysville.

Cross-Q. 77. How long were you at Marysville last summer?

A. I think a day or so more than a week.

Cross-Q. 78. Did your brother, William K. Fenn, then tell you about it, and did he tell you that he had been employed by the defendants in this case to look the matter up?

A. I do not remember that he did.

Cross-Q. 79. From whom, then, did you learn, at that time, about the inquiry that was going on concerning the ram?

A. He, apparently to me, causiously asked me if I had ever seen a ram to force water up to Kissinger's house, on the Draper farm. I replied it occurred to me I had. He did not give me the information at that time that he was employed to collect evidence in this case.

Cross-Q. 80. When, if ever, did he give you that information?

[*This line of examination objected to as immaterial, irrelevant, and not proper cross-examination.*]

A. Probably the same day after I answered his inquiry.

Cross-Q. 81. Is your brother, William K. Fenn, the gentleman who has been in attendance here during the greater part of your examination, and in conference with defendants' counsel?

[*Objection continued.*]

A. That is my brother sitting in that rocking-chair [indicating W. K. Fenn, Esq.]

Cross-Q. 82. Was it in the early part or the latter part of your visit last summer to your brother at Marysville, that he asked you whether you had seen the ram or not?

[*Same objection.*]

A. I cannot really recollect; it may have been the early part, or it may have been the late part.

Cross-Q. 83. Have you visited Marysville since last summer at all?

[*Same objection.*]

A. On my trips west I have stopped off to see the folks at Marysville several times—sometimes not finding my brother William at home.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 17th day of January, 1884.

FRED. M. OTT,
Examiner.

THEO. FENN.

Adjourned until January 18, 1884.

January 18, 1884.

Examination resumed, pursuant to adjournment.

Present, same counsel.

JACOB R. VANASDALE, *being produced, affirmed, and examined, saith:*

Examined by Mr. Hill:

My age is forty-six years; I reside in Silver Spring township, Cumberland county, Pa. I am what you might term a thresher-man; I have a steam thresher, and go around threshing with it; I also work a little piece of ground that I have. In the fore part of the summer I go around selling machinery for Hauck & Comstock, of Mechanicsburg, and have been doing so for years.

Q. 1. How far do you live from Eberly's Mills, Cumberland county, Pa.?

A. I should think from my place it might be nine or ten miles.

Q. 2. Do you know Mr. John Renard, of Cumberland county?

A. Yes, sir.

Q. 3. Did you ever do any threshing for him?

A. I shelled clover-seed for him; yes, sir.

Q. 4. How many times?

A. I shelled clover-seed twice for him.

Q. 5. Where was he living when you shelled clover-seed for him the first time?

[*Objected to as not rebuttal.*]

A. Above West Fairview, Cumberland county, on old Mr. Heck's farm.

Q. 6. How far is that from Eberly's Mills?

A. I couldn't tell the positive distance from Heck's farm to Eberly's

Mills; to the best of my knowledge it might be seven miles—six or seven miles.

Q. 7. Where was Mr. Renard living the second time that you shelled clover-seed for him?

[*Objection continued.*]

A. He was living in Milltown; I think on what was called the George Heck farm.

Q. 8. Did you shell the clover for him there at the farm which he occupied at Milltown?

A. Yes, sir; the second time we shelled for him we shelled there.

Q. 9. You say "We;" what other party besides yourself took part in the shelling on that second occasion?

A. I had Jacob F. Ensminger to help me; I had him hired.

Q. 10. Are you able to fix the time when you and Mr. Ensminger shelled clover-seed for Mr. Renard at his Milltown farm?

A. Yes, sir; it was the 4th of February, 1875, that we finished the job.

Q. 11. Did you or not make any entry or charge of that clover shelling in any account-book or memorandum book at the time?

A. Yes, sir; I always had a rule, when a job was done, to put down the number of bushels, and the day and year, and the amount of wages collected.

Q. 12. Have you that memorandum-book here in which you made that entry?

A. Yes, sir.

Q. 13. Will you please produce it and point out the entry, in order that the examiner may copy it upon the record?

A. Yes, sir; here it is.

[*Witness produces book containing the following entry:*

"John Renard $5\frac{1}{2}$

Feb. 4, wages 2.00."

At the top of the left-hand column of the page, "January 1875," appears. The top of the next preceding page is headed, "1874 Dec," and the top of the next succeeding page is headed, "1875 March;" the pages contain other accounts or entries relating to other individuals.]

Q. 14. When was this entry written in the book, and by whom, and in whose possession has the book been from that time to the present?

A. It was written by me on the 4th of February, 1875, and has been in my possession ever since.

Q. 15. If I understand you, this was the last threshing that you ever did for Mr. Renard—am I correct?

A. It was the last threshing I ever did at Milltown; I have threshed grain for him since, but not at Milltown.

Q. 16. Did Mr. Ensminger ever help you to thresh for him afterwards or not?

A. No, sir; he never helped me after that—that is, for John Renard, at Milltown.

Q. 17. Are you acquainted with Daniel Drawbaugh, of Eberly's Mills?

A. Yes, sir.

Q. 18. Have you ever been in his shop at Eberly's Mills; if so, how many times, and when was the last time?

A. Yes, sir; I have been in his shop; when we shelled that seed for Renard I was in; that was, to the best of my knowledge, on the second of February, 1875; and on the morning of the third of February, 1875. I have never been in his shop since.

Q. 19. Were you ever there before that time or not?

A. No, sir; I never was there before.

Q. 20. What job of work, if any, were you engaged in doing at the time when you went to Mr. Drawbaugh's shop?

A. We were shelling John Renard's seed.

Q. 21. About how many days were you at work for Mr. Renard shelling that seed, at that time?

A. About two days.

Q. 22. When you went down to Mr. Drawbaugh's shop the second time you say it was in the morning. When you went there on the preceding day, what time of day was it?

A. It was in the evening, after dark.

Q. 23. On either of those two visits to Mr. Drawbaugh's shop, did anybody go with you? If so, who?

A. J. F. Ensminger was with me on both visits.

Q. 24. When you and Mr. Ensminger were in Mr. Drawbaugh's shop that evening, did you see anybody there? If so, whom?

A. I saw Daniel Drawbaugh.

Q. 25. And when you and Mr. Ensminger were in the same shop the next morning, did you see anybody there? If so, whom?

A. Daniel Drawbaugh, and another man turning off axles.

Q. 26. Do you mean that both men were turning off axles?

A. No, sir; there was only one man turning off axles; to the best of my knowledge, it was this man they call "Shorty" Drawbaugh; I don't know what his name is, but I heard him called "Shorty" when we were there at Milltown.

[*By consent, the examiner certifies that Harmon K. Drawbaugh is commonly called "Shorty."*]

Q. 27. When you and Mr. Ensminger were in Daniel Drawbaugh's shop, in February, 1875, in the evening, and saw Daniel Drawbaugh there, did you see any machines or inventions of Mr. Drawbaugh's there? If so, what?

[*Objected to as new matter, not rebuttal, the objection to apply to all succeeding questions on this line of examination.*]

A. Yes, sir; we saw a clock there run by a magnet; we saw one run by electricity, and then we saw something that he said was a talking-machine that he was getting up; and we saw a fire-alarm that he had there.

Q. 28. Will you look at the instruments marked "F," "B," "C," "I," "A," "D," "E," Reproduced "F," Reproduced "B," and Reproduced "C," which the Examiner will now produce for your inspection, and state whether or not you recognize among them anything which you saw at Mr. Drawbaugh's shop that evening?

[*Question objected to, no foundation having been laid for it.*]

A. Yes, sir; I will look at them; here is a piece I recognize, [indicating "I,"] and here is a piece, ["A,"] and this one, [F,] and this, ["B,"] and here is another, ["C;"]—it is a likeness-machine, isn't it?—here is another piece, ["C" Reproduced;] Now, we saw this curled magnet, [indicating the curled permanent magnet on Exhibit "D,"] but it was not put together this way. This curled magnet, it appears to me, was lying with these others, but not fastened to any block; I know we was looking at this curled magnet, and he told us that it belonged to a talking-machine; this piece here, ("E,") I don't recognize that; I may have seen it there, too.

Q. 29. If you had any conversation there that evening with Mr. Drawbaugh regarding this machine "A," will you please state what it was?

[*Objected to as leading.*]

A. I think that I asked him whether that was to look into [indica-

ting mouthpiece of "A,"] because it struck me right away as if that was to look in.

Q. 30. Do you remember whether he made any reply to that remark; and if so, what that remark was?

A. No, sir; I remember that he laughed about it, but I can't mind any more what he said the hole was for.

Q. 31. When you saw there that evening the instrument which you think was this Reproduced "C," do you remember whether or not it had spools and a large horse-shoe-magnet like these now on "Reproduced C?"

[*Objected to as leading and otherwise incompetent.*]

A. Yes, sir; the magnet was right up against the spools there; I looked at that thing.

Q. 32. Do you remember what errand, if any, you and Mr. Ensminger had down at Drawbaugh's shop that evening?

A. Yes, sir; we went down there to get our knives magnetized.

Q. 33. You have stated that you did some threshing for Mr. Renard while he occupied a farm above West Fairview, six or seven miles from Milltown; are you able to fix the date when you did that work for him up there? If so, will you state what date it was, and how you fix it?

A. That was on the 21st of January, 1874; it is charged in the book here as hulling twenty-one bushels of clover-seed for him; wages, $4 00.

Q. 34. The book in which this charge of January 21, 1874, is contained, is not the same book in which the charge of Feb. 4, 1875, is contained, is it?

A. No, sir.

[*Witness produces the book containing the charge of January* 21, 1874, *and shows the entry, which is as follows:*

"January 1874
21 John Rhenard 21
Wages 4.00."]

Q. 35. When and by whom was this entry of Jan. 21, 1874, made in the book, and in whose possession has the book been ever since that time?

A. It was made the 21st of January, 1884, by me, and in my possession ever since.

[*Deposition objected to as not rebuttal, and cross-examination, de bene esse, by Mr. Howson.*]

Cross-Q. 36. When next, after this clover-seed shelling done at Milltown for Mr. Renard, did you do any threshing of any kind for him?

A. I can't mind of doing any after that up till—year before last, I guess it was; I shelled a little seed for him the year before last; but I don't think there was any charge made of that; it was only a little bit.

Cross-Q. 37. Where was Mr. Renard living when you shelled a little seed for him year before last?

A. Where he lives now, on Mr. Dill's farm, near Good Hope, Cumberland county. The seed wasn't shelled on his place; we were shelling at Shellenberger's, and he just brought it over there; it was only a few quarts.

Cross-Q. 38. Do you know when Mr. Renard moved away from Eberly's Mills, or Milltown?

A. No, sir.

Cross-Q. 39. But I understand that you have no recollection of shelling any seed for Mr. Renard between the time that you shelled seed for him at Eberly's Mills, and the time when you shelled a small quantity of seed for him year before last, near his present home; is that a fact?

A. It seems to run in my mind that it was last year, just after we had threshed the grain for him, that we shelled the seed for him at Shellenberger's; yes, it was last year. I remember that last year I threshed his whole crop out, and then he said he had a little clover-seed, and it wouldn't be worth while for us to come back for that, and then we hauled it over to his neighbor's. We never shelled any from the time we shelled at Eberly's Mills until last year.

Cross-Q. 40. Have you any recollection of shelling seed for Mr. Renard at Milltown, or Eberly's Mills, more than once?

A. No, sir; I have no recollection of ever shelling more than that one time.

Cross-Q. 41. The book-entry of work done for Mr. John Renard, which is copied into the record after your answer to interrogatory 13, and which you state to be the account of the work done for Mr. Renard at Milltown, is the entry which I now show you on page 10 of the book produced by you in answer to interrogatory 13, and which I now show you; is it not?

A. Yes, sir.

Cross-Q. 42. On page 20 of the same book I find the following entry:

"24 John Renard $5\frac{1}{2}$,
Wages paid 2.25"

At the top of the page appear the words "February clover-seed;" what does the entry which I have quoted refer to?

A. That was carried over from page 10 to add up, but there was a mistake made in carrying that over; there is a quarter added to the wages there; you will find that the amount of bushels correspond with that on page 10.

Cross-Q. 43. The entry on page 10 appears to be under date of February 4, and you have so stated; the entry on page 20 is dated February 24; how do you account for that?

A. It was an oversight somehow, when we carried it over. There is a mistake in the date and in the amount of wages; I didn't care so much about that so long as I got the amount of bushels.

Cross-Q. 44. Which of the dates is correct—that on page 10 or that on page 20—February 4 or February 24?

A. That on page 10—February 4, 1875—is correct.

Cross-Q. 45. On the same page, 20, and just preceding the Renard entry, is one reading as follows:

"11 George Hauck 15
Wages paid 2.75"

What does that entry refer to?

[*Objected to as new matter not relevant to the direct examination.*]

A. That has been brought over from some other page, too; I can't tell without looking at the book. [Witness, without looking at the book] adds, That was brought over from page 10, too.

Cross-Q. 46. Were the Renard entry and the Hauck entry brought over from page 10 to page 20 at the same time, or at different times?

[*Same objection.*]

A. They were brought over at one time, but there may be a mistake in the dates. I sometimes, a year afterwards, take and set an account on a different page.

Cross-Q. 47. Please indicate, on page 10, the entry of work done for George Hauck, of which the entry on page 20 is a copy?

[*Same objection.*]

[*Witness points out entry reading as follows:*

"12 George Hauck $11\frac{5}{8}$,
Paid wages 1,50 $15\frac{1}{2}$"]

The toll was taken out of that and then it was paid for—it is marked paid—and then the toll was added on again, making it 15 bushels.

[*On the left-hand column of the page, above the figures* "12," *appears the word* "*January.*" *The entire entry appears above the entry relating to Renard on the same page.*

Complainants' counsel desires the Examiner to note upon the record that the entries on page 20 *of the book, being the entries particularly referred to in cross-interrogatories* 42 *and* 45, *both appear under the month* "*February;*" *that the Houck entry is on the top of page* 20, *and that on the preceding page,* 19, *are five entries, all appearing to refer to the year* 1876, *and the two last entries on said page,* 19, *appearing to refer to dates in February anterior to the* 11*th.*

The entries on page 20 *are further specially objected to by Mr. Hill because the witness has already testified that they were not original entries, and were not made at the time of the work, but were merely transferred over from a previous page at some subsequent time.*]

Recess until 2, P. M.

Cross-Q. 48. You say, in answer to cross-question 42, that the Renard entry was carried over from page 10 to page 20 of the book to add up; please explain yourself more particularly.

[*Same objection.*]

A. Sometimes when I was in a hurry and wanted to carry over something that way in counting up, I do it in a hurry, and get it wrong, and not finish it up; and sometimes when I was busy at my book some of my fellows would call me, and I would drop it and go off and leave everything, and not finish it up.

Cross-Q. 49. Please examine the book, and point out to me any other instance of this habit of yours referred to in your last answer.

[*Same objection, and further objected to as assuming.*]

A. I believe I don't find another place, but that was the way that that thing has been done; that last entry there has been made by mistake in a hurry.

[*Complainants' counsel requests that the Examiner will mark the book for identification, to be produced when called for, and that he will retain said book in his custody. He also requests that the Examiner will copy on to his record the entries appearing on pages* 18, 19, *and* 20 *of the book, stating on what pages the entries copied are found.*

To the last request respondents' counsel objects on the ground that the en-

tries on pages 18, 19, *and* 20 *are immaterial and irrelevant, and he requests the Examiner to copy on to the record the pages* 9, 10, *and* 11, *in such manner as to show the respective pages upon which said entries occur.*]

The entries are as follows:

"*Page* 18:

"1875, Clover Seed Acount
23 Christian Martin $4\frac{1}{8}$
Wages Paid 75
28 Benjamin Albright 4
Wages 1.00

1876		
January.	Ameles Harwick	$6\frac{1}{2}$
4	Wages Paid 1.25	
7	Andrew Stone	$27\frac{5}{8}$
	Wages Paid 2.50	
	John W. Shaffer	$7\frac{1}{2}$
	Wages Paid 1.25	
17	Amos Spangler	$5\frac{6}{10}$
	Wages Paid 1.25	
		$55\frac{1}{4}$"

Page 19:

"1876, Clover Seed Acount

January	Harry Hartzler		$7\frac{1}{2}$
25	Wages Paid 2.00		
27	Abraham Smiser		$5\frac{5}{8}$
	Wages Paid 1.50		
29	Joshua Nelson		$8\frac{1}{2}$
	Wages paid 1.75		
February	Wm. H. Rice		$5\frac{1}{2}$
2	Wages paid .75		
	John Senseman		
	Stack	5.00	
	Wages	.75	
		4.25	$22\frac{1}{8}$"

Page 20:

"February	Clover Seed	
11	George Hauck	15
	Wages paid 2.75	
24	John Renard	$5\frac{1}{2}$
	Wages paid 2.25	
		$20\frac{1}{2}$"

Page 9:

"1874 Clover Seed Acount

December	Martin L. Eppley	$5\frac{1}{4}$
24	Wages paid 1.00	
30	Martin Reninger	4
	Wages paid .50	

1875		
2 January		
	Christian Dietz	5½
	Wages 1.00	
5	John Swartz	6⅝
	Wages Pd. 1.50	
6	John Gamber	¼
6	John Shaffer	1¾
	Wages Pd. .30	
		23⅛"

Page 10:

"Clover Seed Acount

January		
1875		
6	Meal Harvy	3¼
	Wages Paid .25	
6	Jacob Digley	1½
	Wages Pd. .25	
12	George Hauck	11⅝
	Paid Wages 1.50	
		15⅞
February		
4	John Renard	5½
	Paid Wages 2.00	
23	David Spangler	10½
	Paid Wages 2.00	
24	Edward Shope	2½
	Wages Paid .60	
		32⅜
	Bush. 36	4"

Page 11:

"1875 Clover Seed Acount

March	Joseph Rife	4
30	Wages 1.00	
31	Total amount of seed shelled	322⅝
31	Amount of Wages Colected	61.10"

Cross-Q. 50. How long did Mr. Jacob Ensminger continue to work for you?

[*Witness asks for book.*

Mr. Howson replies: "*No; I am testing your memory.*"]

A. To the best of my knowledge, he commenced working for me in 1873, and, to the best of my knowledge, he quit on the 5th of February, 1875. He may have done some work for me in 1876; I am not positive about that.

Cross-Q. 51. Now, I ask you to look at your book and tell me if it does not show that Mr. Ensminger was working for you in October, November, and December, 1875, and January and February, 1876?

A. I said I wasn't positive; that he might have been working for me in 1876. The book shows that he worked for me in October, November, and December, 1875, and right after those entries are entries January and February. Yes, sir; that is right.

Cross-Q. 52. You find from the book, do you not, that Mr. Ensminger, instead of ceasing to work for you on the 5th of February, 1875, was, in fact, working for you at a date after February 22d, 1876?

A. Yes, sir.

Re-direct by Mr. Hill:

Q. Q. 53. These books which you have produced here are small pocket memorandum books, are they not?

A. Yes, sir.

Q. Q. 54. From their worn and soiled appearance, I judge that they were carried in your pocket while you were about your work; am I right or not?

A. Yes, sir; they were carried in my pocket while working.

Q. Q. 55. Is this entry of February, 1876, to which Mr. Howson referred in his last interrogatories, the last entry relating to work done by Mr. Jacob F. Ensminger? I do not mean payments to him, but work done by him.

A. Yes, sir; that is the last entry of work that I find in this book.

Examination taken, reduced to writing, and by the witness affirmed and subscribed to before me, this 18th day of January, 1884.

FRED. M. OTT,
Examiner.

JACOB S. VANASDALE.

[By consent, adjourned until Thursday morning, January 24th, 1884, with the understanding that the examiner may adjourn from day to day, after that date, in case counsel are not able to attend on said day.]

After adjournment by the examiner from day to day, examination resumed on January 28, 1884, at 11, A. M.

Present, Mr. Howson for complainants, and Mr. Jacobs for respondents.

ABNER CASSEL, *being produced, sworn, and examined, saith:*

Examined by Mr. Jacobs:

My age is fifty-four; I reside in Harrisburg, Pa., and have lived there since the fall of 1876; I can't say that I have anything that I can call my occupation now, except farming; I attend to my farms; I had been a farmer before I came here, and I attend to my farms now.

Q. 1. It has appeared in evidence in this case that a farm lying in or near Marysville, Perry county, Pa., was sold early in 1878, by Margaretta D. Fenn to Abner Cassell; are you that Abner Cassell?

A. I am, sir.

Q. 2. If you have the deed which you received for that farm, will you please produce it in order that the examiner may make a memorandum of it upon the record?

A. I will.

[*Witness produces deed dated January* 19, 1878, *between Margaretta D. Fenn and Theo. Fenn, her husband, of the borough of Marysville, county of Perry, and State of Pennsylvania, of the first part, and Abner Cassell, of* 933 *North Third street, in the city of Harrisburg, of the second part; which deed for and in consideration of the sum of thirteen thousand seven hundred dollars, grants and conveys to the said Abner Cassell a tract of land situated in Rye township, Perry county, Pennsylvania, containing about two hundred and eighty-three acres, more or less. Said deed is signed by Margaretta D. Fenn and Theo. Fenn, and acknowledged before Wm. H. Ulrich, a notary public, January* 19, 1878.]

Q. 3. When did you take possession of that farm under that deed?

A. I really didn't get actual possession until the 1st of April; I took the landlord's possession at once, but the tenants were there, and their leases didn't run out until the 1st of April, 1878, so I didn't get possession of their interest until that time; as far as Mr. Fenn's interest was concerned, I took possession all at once; as the farm would have been sold by the sheriff if I had not done so. Mrs. Fenn owned the farm, but Mr. Fenn always managed it for her; they both deeded it over to me.

when that ram was first put in, and when any work was done in connection with or preparatory to putting it in; if you know anything on that subject that will aid us in fixing the time, will you please state what was the first knowledge that you had of it of which you now remember, and when you had that knowledge?

A. The first knowledge I remember of the case was that Mr. Kissinger was talking to father between the Fishing Creek valley road and the house, and telling him that Mr. Draper had bought a hydraulic ram to throw the water from the spring to the house; that it was too hard to carry it up the hill; it was in 1875 or 1876; I couldn't just say what time it was.

[*Objected to by Mr. Howson as not evidence.*]

Q. 11. Did you afterwards have any further knowledge about the ram or not?

A. Yes, sir; I did.

Q. 12. What knowledge?

A. In the latter part of the summer of 1876, I worked for Mr. Kissinger; I helped to dig the trench between the ram and the house; I did about two hours' work at it. This was before I worked for Mr. Ezra Gilbert.

Q. 13. What portion of the trench between the ram and the house did you at that time help to dig?

A. About half way between the ram and where the pipe came out of the ground next to the house.

Q. 14. At that time, when you helped to dig the trench, had or had not the trench already been dug from the point where you worked to to the ram, and from the ram to the spring?

[*Objected to as leading.*]

A. It had been dug from the point where I worked to the ram, and from the ram to the spring; yes, sir.

Q. 15. After you were through with your work for Mr. Ezra Gilbert, in the early part of October, 1876, where did you spend the remainder of that fall?

A. At Marysville, Perry county, Pennsylvania.

Q. 16. Did you ever do any work for Mr. George W. Kissinger after you finished working for Mr. Gilbert, or not?

A. Yes, sir; I did.

Q. 17. How soon after you finished working for Mr. Gilbert did you do any work for Mr. Kissinger?

A. I left Mr. Gilbert on the 7th day of October, 1876, and went to work for Mr. George W. Kissinger on the 13th day of October, 1876.

Q. 18. How long did you work for Mr. Kissinger at that time?

A. I worked, as near as I can tell, about six days; I worked back and forward along all fall.

Q. 19. While you were working for Mr. Kissinger, in October, 1876, where did you get your meals?

A. At Mr. George W. Kissinger's.

Q. 20. While you were working at that time there, and getting your meals at Mr. Kissinger's house, did you, or did you not, have occasion to pass back and forward between his barn and his house, or to go to his spring?

A. Yes, sir.

Q. 21. If you took any notice, at that time, of the trench which you had helped to dig, or of any other thing relating to the ram or the pipes, will you tell us what you saw, if anything?

[*Objected to as leading.*]

A. Yes, sir; I saw that the trench which I helped to dig was covered up. About half way from where I helped to dig to the house the pipe ran up on boxes or trestles; I couldn't just say which.

Q. 22. What portion of the fence between the spring and the house was covered up at that time when you worked there, in October, 1876?

A. From the part where I worked down to the ram, and from where I worked about half way up to the house, it was covered.

Q. 23. How was it between the ram and the spring?

A. I couldn't exactly say, but to the best of my knowledge it was covered up, too.

Q. 24. Do you know whether the ram had been put in at that time or not?

[*Objected to as leading.*]

A. Yes, sir; it was put in at that time—or, rather, was in at that time.

Q. 25. Did you see it or not?

[*Same objection.*]

A. I did not; I saw the water coming out of the spout above, and by that I thought the ram was at work.

Q. 26. Did you do any work for Mr. Kissinger in the spring of 1877, or not?

A. Yes, sir, I did—about the second or third of May.

Q. 27. When you were there working for Mr. Kissinger in the spring of 1877, if your attention was in any way called to the working of the ram, will you please tell us what took place?

[*Objected to as leading.*]

A. Yes, sir; they had said it was broken, and on our way from the barn to the house they had it covered up with corn-fodder; to the best of my knowledge, Cyrus Kissinger uncovered the ram and told me it was broken.

Q. 28. Did he tell you how it had got broken; and if so, what did he tell you?

[*Objected to as incompetent.*]

A. He told me it had got frozen the winter before.

Cross-examined by Mr. Howson:

Cross-Q. 29. When did you leave Springfield, Ohio, to come here and testify in this case?

A. On the 8th of January, 1884.

Cross-Q. 30. Where have you been staying during the time—from two to three weeks—that you have been waiting to give your testimony here?

A. At Marysville, Perry county, Pa.

Cross-Q. 31. When next after the 2d or 3d of May, 1877, did you do any work for Mr. George W. Kissinger on the Draper farm?

A. In the fall of 1878—late in the fall.

Cross-Q. 32. Specify the time a little more particularly—say what month, and if you can, what time in the month.

A. I cannot say; Perry county farmers generally thresh as they need it.

Cross-Q. 33. Did you keep any memoranda, or have you had access to any written memoranda, showing the dates at which you worked for Mr. Kissinger?

A. I kept none; no, sir. My father kept a book; yes, sir.

Cross-Q. 34. Does that book show the dates at which you were working for Mr. Kissinger, as well as the dates at which your father was working for him?

A. Yes, sir; it does.

Cross-Q. 35. To whom, if toany one, lately, have you shown that book?

A. I can't say that I have shown it particularly to anybody, with one exception that I make—Lawyer Jacobs.

Cross Q. 36. When and where was it that you showed it to Lawyer Jacobs, and did you show it to him more than once?

A. In his office; as near as I can say, it was about the 11th of January, 1884; I brought it down from my stepmother's, and told him to keep it there till I went to my dinner, as I wanted to read it.

Cross-Q. 37. Did you afterwards take the book away with you, or did you leave it there?

A. No, sir; I left it there; I intend to take it away as soon as I am through here.

Cross-Q. 38. When did you last refer to that book?

A. I was looking at it this afternoon.

Cross-Q. 39. When did you last do any work for Mr. Kissinger on the Draper farm?

A. Late in the fall of 1878.

Cross-Q. 40. Did you work for him on more than one occasion, or more days than one that fall, and if yes, on what occasions, and how many days were you working for him that fall?

A. I don't know that it was more than one occasion, but I worked for him three or four days.

Cross-Q. 41. You are sure, are you, that between the spring of 1877 and the fall of 1878 you did no work for Mr. Kissinger on the Draper farm?

A. Yes, sir; from the 3d day of May, 1877, till the fall of 1878, I done no work for Mr. George W. Kissinger.

Cross-Q. 42. Please tell me what time in the fall of 1878 it was that you did three or four days' work for Mr. Kissinger, referring, if you please, to the book which you say is in Mr. Jacobs' possession?

A. I could not tell you, as the book don't give it.

Cross-Q. 43. Give us, then, your best recollection on the subject; was it in October or November, of 1878?

A. To my best recollection, it must have been November.

Cross-Q. 44. Early in the month or late in the month?

[*Objected to as calling for mere guess-work, the witness having already exhausted his recollection on the subject of the question.*]

A. I could not say.

Cross-Q. 45. While you were working for Mr. Kissinger on that occasion, you took meals at his house, I suppose?

A. Yes, sir.

Cross-Q. 46. You have stated that you worked for Mr. Kissinger in the summer of 1876, when you did about two hours' work on a certain trench; can you tell us more particularly the date of that work, and how long you were at work for Mr. Kissinger on that occasion?

A. I worked for Mr. Kissinger all along during the summer—not steady, but just as he needed me.

Cross-Q. 47. When you did this two hours' work at the trench, who else was at the job?

A. It is more than I am able to say; it was one of the boys helped me at the job; but whether it was Frank, or Cyrus, or John, I am unable to say.

Cross-Q. 48. What other work were you at the day you did this two hours' work on the trench?

A. To the best of my knowledge, we was hoeing cabbage, picking cabbage-worms, and such like.

Cross-Q. 49. Whom do you mean by "we," in your last answer?

A. The man that was working with me—I will say "I."

Cross-Q. 50. You have already said "we," and when I asked you whom you meant you said the man who was working with you; who was that man?

A. I told you I couldn't just say whether it was Frank, Cyrus, or John; it wasn't Mrs. Kissinger.

Cross-Q. 51. Down to how late in the fall of 1876 were you working for Mr. Kissinger?

A. I worked for Mr. Kissinger in the fall and winter of 1876—days that he would have me down when he needed me.

Cross-Q. 52. How late in the fall or winter was it that you noticed pipe running up on boxes or trestles as you have stated in your answer to interrogatory 21?

A. On the 13th day of October, 1876.

Cross-Q. 53. How much of this pipe did you see at that time, and what sort of pipe was it?

A. I saw about eighteen or twenty feet to the best of my knowledge; it looked like iron pipe; I did not test it.

Cross-Q. 54. How many of these boxes or trestles were there that you say the pipe run up on, and how high were they above the ground?

A. I did not count them nor I didn't measure the pipe to see how high they were, but I judge they were about two and a half feet.

Cross-Q. 55. Were you living at home with your father during the time from the spring of 1877 to the fall of 1878?

A. No, sir; I was not.

Cross-Q. 56. Where were you?

A. I left home about the middle of May, 1877, and lived with Mr. William Shaeffer, about four and a half miles from Marysville, up the Fishing Creek valley; in the spring of 1878, in corn-plowing time—I couldn't just tell the date—I left there; I then went to Solomon Wertz's, in Cumberland county, and stayed with him till the fall of 1878—till September, or along there.

Cross-Q. 56. From the fall of 1878 down to April, 1879, you were living at home with your father, in his house, close by the Draper farm; is that correct?

A. Yes, sir.

Cross-Q. 57. And down to that time your father was accustomed to work for Mr. Kissinger on the Draper farm, was he not?

A. He was.

Cross-Q. 58. I wish you would exercise your memory and tell us, if you can, who it was who was working with you at the time you say you did the two hours' work on the trench on the Draper farm?

[*Objected to, as the witness has twice testified to the entire exhaustion of his memory on the subject inquired of, and the continued repetition of the question is simply tiresome and wasting time.*]

A. I told you at that time that I couldn't tell, nor I can't tell now.

Cross-Q. 59. How far from the house was the part of the trench that you did this two hours' work upon?

A. About twenty-five or thirty yards, as near as I can judge.

Cross-Q. 60. How deep and how wide was the trench which you did this work upon?

A. That is more than I am able to say, as I did not measure it.

Cross-Q. 61. Is that the best answer you can or will give me to my question?

A. That is the best I can or will do, as it has been so long that I have forgotten.

Cross-Q. 62. Did you ever do any trench-digging work on the Draper farm at any other time, or ever see any other being dug there?

A. I never done no other; no, sir. I saw my father and some of the Kissinger family dig a trench for a hedge fence.

Cross-Q. 63. When was that, and whereabouts was that trench?

A. I can't exactly tell you when it was; it ran between the Fishing Creek valley road and the mountain road.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 28th day of January, 1884.

FRED. M. OTT,
Examiner.

WILLIAM H. MEALS.

Adjourned until January 29, 1884, at 10, A. M.

January 29, 1884, 10, A. M.

Examination resumed.

Present, same counsel.

JACOB F. ENSMINGER being produced, sworn, and examined, saith:

Examined by Mr. Hill:

My age is 29; I reside at Marysville, Perry county, Pennsylvania; I am a brakeman on the Northern Central railway.

Q. 1. Were you ever at the village of Milltown, Cumberland county, Pennsylvania; if so, how many times in your life?

A. I was there but once; that was all.

Q. 2. What caused you to go to Milltown on that occasion?

A. I went there to help to hull clover seed.

Q. 3. To help whom?

A. Jacob Vannasdale—he has a middle name, but I don't know it.

Q. 4. To help him hull whose clover seed?

A. John Renard's.

Q. 5. What season of the year was it when you helped Mr. Vannasdale to hull Mr. Renard's clover seed at Milltown?

A. It was the beginning of February.

Q. 6. While you were at Milltown on that occasion, did you go about

in the village any, and were you in the grist-mill, or in Mr. Daniel Drawbaugh's shop, or in the store, or in the blacksmith shop?

[*Objected to as a leading and improper mode of inquiry.*]

A. Yes, sir; I was around some; I was not in the grist-mill, that I remember; I was in the church back of the mill one evening, I think, and I was around there; I was in Mr. Drawbaugh's shop; I was in the store; yes, sir, I was not in the blacksmith shop, though.

Q. 7. Do you remember who was keeping the store at that time?

A. I do not remember the man's name.

Q. 8. Did you see the store-keeper while you were there or not?

A. Yes, sir; I seen him.

Q. 9. Where did you see him?

A. I saw him in his room in the old mill-house—I believe they call it—where he had moved to.

Q. 10. What was he doing there in that room?

A. He was preparing his goods for auction.

Q. 11. Do you know why he auctioned off his goods at that time?

[*Objected to as incompetent and not seeking the best evidence; and this entire line of examination objected to as immaterial, irrelevant, and not rebuttal.*]

A. He was auctioning them off because of an explosion that had occurred in his store some time previous.

Q. 12. If you were at the time informed as to how long that explosion occurred before you were at Milltown, will you please state what your information was about it?

[*Objections continued.*]

A. As near as I can remember, it was inside of three weeks.

Q. 13. While you were at Milltown was there still much excitement and talk about the explosion or not?

[*Objections continued, and also objected to as leading.*]

A. Yes, sir; the excitement was still up.

Q. 14. You have stated that you were in the store while you were in Milltown; do you remember why you went there?

A. I went there to see what the building looked like after it had exploded or blown up.

Q. 15. What did it look like, and what was the condition of the property inside of it when you were there looking at it?

A. The building was a total wreck, and the property inside of it, such as queensware, crockery, and such-like, was all broken and scattered over the building.

Q. 16. You state that while you were there at Milltown on that occasion, you were in Mr. Daniel Drawbaugh's shop; how many times did you visit Mr. Drawbaugh's shop, and who, if anybody, was there with you?

A. I was there twice; no one but Mr. Vannasdale went there with me when we went there.

Q. 17. What time of day was it when you made your first visit with Mr. Vannasdale to Mr. Drawbaugh's shop, and what time of day was it when you and Mr. Vannasdale made your second visit?

A. Our first visit to the shop was in the evening, and the next was the next morning.

Q. 18. When you and Mr. Vannasdale visited the shop in the evening whom did you find there, if anybody?

A. We found no one there but Mr. Drawbaugh himself.

Q. 19. And when you and Mr. Vannasdale visited Mr. Drawbaugh's shop the next morning, whom did you find there, if anybody?

A. Mr. Drawbaugh was there and another man—I do not know his name—those two were the only ones there when we got there the next morning.

Q. 20. Were they, or was either of them, doing anything while you were there that morning; if so, which of them, and what?

A The stranger—that is, the other man besides Mr. Drawbaugh—he got to turning spindles just a little while before we left the next morning.

Q. 21. While you and Mr. Vannasdale were in Mr. Drawbaugh's shop that evening or the next morning, did you see any of Mr. Drawbaugh's machine or inventions there or not?

[*Objected to as assuming and leading; also objected to as not rebuttal, this last objection to apply to all succeeding questions upon the same line of inquiry.*]

A. Yes, sir; I seen several.

Q. 22. Will you mention the different inventions of Mr. Drawbaugh that you saw there at that time, so far as you can remember them?

A. I saw his electric clock, his dial telegraph, and several pieces

that he had made that he called his talking-machine, as he called it at that time, and several other pieces that he had.

Q. 23. On which of the two visits did you see what he called his talking-machine?

A. I think I saw them both times, because I was right in his working-room both times—I was there—right at his work-bench.

Q. 24. Will you please look at the instruments "F," "B," "C," "C Reproduced," "I," "A," "D," and "E," and tell us whether or not you are able to identify any of them as things which you saw at Mr. Drawbaugh's shop at the time you and Mr. Vannasdale were there together?

[*Objected to as incompetent, the witness having described nothing from memory, and no foundation having been laid for the question.*]

A. Here are three, the only ones that I can identify, [taking up "A," "D," and the permanent magnet of "C Reproduced."] This one [taking up instrument "D,"] I can identify only in part.

Q. 25. What part of the instrument "D" is it that you can identify?

A. The magnet only.

Q. 26. At the time when you were there at Mr. Drawbaugh's shop, where did you see this magnet which now appears on instrument "D," and what, if anything, was said or done about it while you were there?

A. It was lying on Mr. Drawbaugh's work-bench in the shape that it is now, only that it wasn't polished and finished as it is now; he had just worked it out of the rough, and said that it belonged to his talking-machine.

Q. 27. Referring to this curled magnet that you are now speaking about, did Mr. Drawbaugh say what, if anything, he was doing with it or about it at that time, so far as you remember?

[*Objected to as incompetent.*]

A. I do not remember that he said or was doing anything about it, more than that he said it belonged to his talking-machine; that is all I remember about the curled magnet; the reason that I call it that—I heard him speak about it.

Q. 28. You have identified this instrument "A" as an instrument that you saw there at Drawbaugh's shop at that time; will you tell us whether you took especial notice of any particular part or parts of that instrument at that time; and if yes, will you point out the parts that you then particularly noticed, and state what you remember about them as you then saw them?

A. The parts that I remember best is this side where the magnets are partly covered by this brass plate; about this other side [indicating the side of "A" having the mouth-piece on] I am not so positive; what I remember, and what makes me remember, is the magnets being partly covered up.

Q. 29. In this instrument "A" the electro-magnets extend through the case into the interior of the instrument; will you tell us, if you remember, how they were at the time when you saw them at Milltown?

[*Objected to as leading.*]

A. I think they were the same as they are now, because they were covered by that brass plate.

Cross-examination, de bene esse, by Mr. Howson:

Cross-Q. 31. How long have you been living at Marysville?

A. It will be four years in March.

Cross-Q. 32. Where did you live before that, and how long?

A. Before I moved to Marysville I lived in Cumberland county; I was raised there.

Cross-Q. 33. Whereabouts in Cumberland county were you living before you moved to Marysville?

A. I was living in Hampden township, about one mile north of Bryson's mills.

Cross-Q. 34. About how far from Milltown, or Eberly's Mills?

A. I do not know the exact distance, but I suppose it would be about ten miles—in that neighborhood.

Cross-Q. 35. How long have you been railroading?

A. It was three years last July that I went on the road.

Cross-Q. 36. What were you doing before that?

A. I was a day laborer; I worked at anything I could get hold of.

Cross-Q. 37. When did you last work for Mr. Vannasdale?

A. It was in the early spring of 1876.

Cross-Q. 38. For whom did you work after that, and where?

A. The fall and winter of 1876 I was doing work myself—running a hulling maching myself, the same as Mr. Vannasdale had—and after that I just worked at whatever I could get to do.

Cross-Q. 39. After you had helped Mr. Vannasdale to hull this clover seed for Mr. Renard, what was the next job, if any, that you helped him to do?

A. I do not remember of doing any more hulling that season.

Cross-Q. 40. What work did you do, and for whom, and where, that season?

[*Objected to as immaterial and irrelevant to the examination-in-chief.*]

A. I do not know as I can answer that question properly, for we were working all winter, and all over that neighborhood; nothing outside of hulling, however, was done.

[*Respondents' counsel requests that the question be again read to the witness.*

Complainants' counsel objects to any uncalled-for interference with the cross-examination]

Respondents' counsel replies that it is apparent that the witness did not understand the question, and respondents' counsel took it for granted that the gentleman who was conducting the cross-examination was willing to conduct it fairly and without taking advantage of such misunderstanding.

The question is not reread to the witness.]

Cross-Q. 41. You have told us that you helped Mr. Vannasdale to hull this clover-seed for Mr. Renard in the early part of February, and you have also told us that you do not remember doing any more hulling that season; I wish to have your recollection as to what was the next job you did after helping to hull this seed for Mr. Renard, and when and where, and for whom this next job was done.

[*Same objection as to cross-question* 40.]

A. The next job we did was not until the next fall or winter following; when it was, and for whom it was I do not know; the job at Mr. Renard's was the finishing up of the season, and, of course, we didn't do nothing then until the coming season in the fall.

Cross-Q. 42. If I understand your last answer aright, you wish us to understand that the clover-seed hulling job which you say you helped Mr. Vannasdale to do for Mr. Renard in the early part of February, was the last job of that kind of work done by Mr. Vannasdale that spring; is that it?

[*Same objection.*]

A. No, sir; not altogether. He done some more hulling, but I did not help him.

Cross-Q. 43. Then, will you please answer my cross-question 41, un-

derstanding it to refer to the next job of any kind of work done by you after helping Mr. Vannasdale hull this seed for Mr. Renard?

[*Same objection.*]

A. I couldn't say what the next job was that I did.

Cross-Q. 44. Have you any better recollection as to the job of work done by you immediately before helping Mr. Vannasdale hull this seed for Mr. Renard?

[*Same objection.*]

A. I think we went from the farm of George Hauck—I won't be positive.

Cross-Q. 45. You have given it as your recollection that you did no work of this kind—that is, hulling clover seed—between the time this job was done for Mr. L. Renard and the fall following; tell us what work you were engaged upon, for whom and where, for any length of time during the intervening period?

[*Same objection.*]

A. I did nothing more than laboring work on a farm, wherever I could get it to do; sometimes I would work a day, and sometimes longer, at a place, and then go somewhere else.

Cross-Q. 46. You have stated that you think you went from the farm of George Hauck to that of Mr. Renard; how long a time, according to your recollection, elapsed between the work done for Mr. Hauck and that done for Mr. Renard?

[*Same objection.*]

A. It might have been a week, or it might have been a little longer.

Cross-Q. 47. You have spoken of seeing some electric clocks in Mr. Drawbaugh's shop; how many of such clocks do you remember to have seen; and describe them as particularly as you can, from memory?

A. I saw two; one was finished, and was running right along; the other one was not finished; the one that was finished was in a plain wooden case, with two magnets underneath the pendulum; it had no weights, and, if I remember, it was noiseless; I would not be positive, though, on that point; but I think.

Cross-Q. 48. How large was the one which you say was unfinished—how large did it appear to be, so far as finished?

A. It was about of an ordinary size, as near as I remember.

Cross-Q. 49. Had it any case; and if yes, of what kind?

A. I do not think that it was in any particular case—that is, as a clock generally is—it was boxed up, though, so as to keep it from being exposed to the dust.

Cross-Q. 50. If I understand your testimony, up to the year 1879 or 1880 you were living in Cumberland county, and after quitting the employment of Mr. Vannasdale, were for three years or more engaged in doing labor for different Cumberland county farmers; is that correct?

[*Same objection as to cross-question* 40.]

A. Yes, sir.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 29th day of January, 1884.

FRED. M. OTT,
Examiner.

J. F. ENSMINGER.

Recess until 2, P. M.

ROBERT MCCLEAF, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

I am twenty-seven years old; residence, Fayetteville, Franklin county Pa; miller by occupation.

Q. 1. Did you ever live in the neighborhood of Milltown, Cumberland county, Pa.?

A. Yes, sir.

Q. 2. How long ago?

A. Well, it was '73 when I went there.

Q. 3. Where you living in your father's family when you went there to live?

A. Yes, sir.

Q. 4. State whether your father is living or not; if not, when he died.

A. No, sir; he died the 11th day of September, 1883.

Q. 5. How long did you live near Milltown?

A. I was there, I guess—I hardly know how to answer that question; I went away in 1873, on the 14th of April, and was away until about two weeks before the holidays of 1873; I was at home then—I don't know the date the store blowed up; but I was at home until the stored blowed up in 1874.

Q. 6. I can give you the date when the store blowed up if that will help you fix the time; the store blowed up on the 19th day of January, 1875; with that date fixed, can you tell me the last time that you lived at Milltown?

A. I went to New Cumberland the next morning, and I was there till the—I was running around several days, and when I got up to the Loysville mills and started to work it was the 28th day of June, 1875.

Q. 7. What were you doing between the time that the store blowed up and the time when you went to the Loysville mills, and where were you?

A. I was working for Zacharias & Co., in the big flouring-mill at New Cumberland.

Q. 8. While you lived in the neighborhood of Milltown, were you ever in Daniel Drawbaugh's shop or not?

A. I was.

Q. 9. How many times?

A. I don't recollect of being more than once there.

Q. 10. Did you ever live in the neighborhood of Milltown after you went to Loysville in June, 1875?

A. No, sir; I did not.

Q. 11. Tell us whether or not you have ever been in Daniel Drawbaugh's shop since the store blew up.

A. No, sir; it was before the store blowed up.

Q. 12. How happened you to be down at Daniel Drawbaugh's shop that time; and who, if anybody, was with you?

A. My father and I went down there to make cider.

Q. 13. Did you and your father make cider there in the shop?

A. Yes, sir; in the lower part of it.

Q. 14. When you and your father were down there making cider the cider-mill, I suppose, was down in the basement where the water-wheel was; is that correct?

A. Yes, sir.

Q. 15. Did you see anything of Daniel Drawbaugh about the shop at that time?

A. Yes, sir.

Q. 16. Did you go up into the shop above the basement while you were there or not?

A. Yes, sir.

Q. 17. How happened you to go up into the shop above the basement?

A. Dan Drawbaugh invited my father to go up-stairs.

Q. 18. What did he say to your father when he invited him to go up-stairs, so far as you remember?

[*Objected to as immaterial, and also as not rebuttal.*]

A. He said, "I'll show you my talking-machine"—which it was called at that time.

Q. 19. And then, if I understand you, you and your father went up-stairs together; am I correct?

[*Same objections, and objected to as leading.*]

A. Yes, sir.

Q. 20. Tell us what was said and done after you got upstairs.

[*Objected to as not rebuttal, this objection to apply to all succeeding questions upon the same line of inquiry.*]

A. Dan went into a little room there and brought out his talking-machine; he put it on his work-bench then, and he had a wire there fixed, attached to it; the wire went into another room adjoining; he told my father to listen, that he was going to talk through that machine over the wire.

Q. 21. Did your father listen at the machine or not?

[*Objected to as incompetent, and also as leading.*]

A. Yes, sir.

Q. 22. Did your father say anything about the working of the machine while you were there; and if yes, state what he said, so far as you remember it?

[*Objection continued, and further objected to as inquiring for hearsay.*]

A. He said he heard it very plainly.

Q. 23. Will you please look at machines "F," "B," "C," "C Reproduced, "I," and "A," which will be now placed on the table before you, and tell us whether or not you find among them anything which you saw at Mr. Drawbaugh's shop that day when you and your father were there making cider?

[*Objected to as leading, no foundation having been laid for the question.*]

A. That is the one, I think, [taking up "A"]; it looks like it.

Q. 24. You have stated that you lived, at that time, near Milltown; on what place did you live, and how near the village of Milltown was it?

A. At Hake's flour-mill, a mile from Milltown.

Cross-examined, de bene esse, by Mr. Howson:

Cross-Q. 25. Are you the husband, or any relative of Mrs. Annie McCleaf, who has lately testified for respondents in this case? (See pp. 445 to 449, respondents printed sur-rebutting record.)

A. She is my wife.

Cross-Q. 26. Where was your father living at the time of his death last fall?

A. He was living at Long's Mill, Perry county.

Cross-Q. 27. And had been there how long?

A. About six months.

Cross-Q. 28. Down to what time did he continue to live at Hake's mill, according to your recollection?

A. He moved there in the spring of 1873, and lived there about eleven years.

Cross-Q. 29. Then, if I understand your testimony, your father was living at Hake's mill, a mile or so from Milltown, down to about 1883; is that correct?

A. He wasn't there eleven years; it would be eleven years since he left there, as I understand you to ask me the question.

Cross-Q. 30. Well, when did he live there?

A. He left there the spring of 1874.

Cross-Q. 31. Where did he go to?

A. He went to Snyder's mill, at Doubling Gap.

Cross-Q. 32. How long did he stay there, and where did he go to from there?

A. I think he was there a year and a half, and then he moved to Ohio.

Cross-Q. 33. To what place in Ohio, and how long was he there, and where did he move to from there?

[*Objected to as immaterial, and irrelevant to the examination-in-chief.*]

A. I think his address was Newville; I don't know the first mill he was in out there; I think he went then to Snyder's mill out there, near Mifflin, Ashland county.

Cross-Q. 34. Where, and with whom were you living in the summer and fall of 1874, and early part of 1875?

A. My father, at Hake's mill.

Cross-Q. 35. When you and your father visited Mr. Drawbaugh's shop, as you have stated, whom did you see there?

A. Dan Drawbaugh was there at his shop.

Cross-Q. 36. No one else?

A. Mrs. Cal Hart came there for cider while we were making it.

Cross-Q. 37. What time of day were you there, and how long were you there?

A. I think it was in the afternoon; I won't be positive about it; we may have been there three hours—or four.

Re-direct by Mr. Hill:

Q. Q. 38. Where were you living or working at the time your father moved away from Hake's mill?

A. At Zacharias & Co.'s New Cumberland flour-mill.

Q. Q. 39. I understand from your previous testimony that you went to Zacharias & Co.'s mill the day after the store blew up in Milltown, and stayed there until sometime in the following June; am I correct?

[*Objected to as not re-examination and as leading.*]

A. Yes, sir.

Q. Q. 40. Did you ever work at Zacharias' mill at any other time?

A. No, sir; I did not.

Q. Q. 41. The store blew up in Milltown in Jannary, 1875; taking that to be the time when the store blew up, will you tell me in what spring it was that your father moved away from Hake's mill?

A. It would be in the spring of 1875.

Q. Q. 42. Then your answer to cross-question 30 in which you stated that he left there in the spring of 1874 was an error, was it?

A. Yes, sir; that was a mistake.

Q. Q. 43. I see that the Examiner has your answer to cross-question 28 written down in the following words, [reading both question and answer,] which I understand you to explain in your next answer as having been intended by you to mean that he moved there in the spring of 1873, and left there about eleven years ago; if he left there in the spring of 1875 that would be nine years ago this spring, would it not?

A. Yes, sir.

Q. Q. 44. Where was your father living when he and you made the cider at Drawbaugh's shop and saw the talking-machine there?

A. Living at Hake's mill.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 29th day of January, 1884.

FRED. M. OTT,
Examiner.

ROBERT MCCLEAF.

ALFRED DITLOW, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

My age is thirty-five; I reside near Greenwood, Franklin county, Pa.; I am a miller.

Q. 1. Did you ever reside in Cumberland county?

A. Yes, sir.

Q. 2. Are you acquainted with Daniel Drawbaugh of Milltown, or Eberly's Mills, Cumberland county, Pa.; if so, how long have you known him?

A. Yes, sir; I have known him, I guess, for fifteen or twenty years.

Q. 3. Will you tell me whether or not Daniel Drawbaugh ever applied to you for the loan of a small sum of money?

[*Objected to as not rebuttal.*]

A. Yes, sir; he did.

Q. 4. Did he state to you at the time what he wanted the money for; if so, what?

[*Objection continued.*]

A. For a patent.

Q. 5. Will you give his exact words as nearly as you can remember them?

[*Objection continued.*]

A. He just asked me if I wouldn't loan him some money for a patent.

Q. 6. Did you loan him the money or not?

A. No, sir.

Q. 7. By the testimony of Mr. George W. Mumper, taken in behalf of complainants last winter, it appears that a man named Alfred Ditlow worked for him from time to time; (see complainants' printed rebutting record, p. 1105;) are you that Alfred Ditlow?

A. Yes, sir.

Q. 8. Mr. Mumper states (see same record, p. —) that at one time you helped him paint his barn; do you remember that circumstance?

A. Yes, sir.

Q. 9. What other work did you do on Mr. Mumper's farm that year besides painting the barn?

A. I quarried some stone for him, and helped him through harvest.

Q. 10. While you were at work on Mr. Mumper's farm at any time, did Mr. Daniel Drawbaugh ever come down there on the farm or not?

A. Yes, sir.

Q. 11. How many times did you ever see him down there?

A. Once.

Q. 12. Tell us all that took place when he came down there on Mr. Mumper's place that once.

A. I was quarrying stone and Mr. Drawbaugh came into the field and called Mr. Mumper to aside; then Mr. Mumper came up to me and I asked him what Mr. Drawbaugh wanted; he said he wanted to borrow some money; Mr. Mumper told him he hadn't the money to spare; that is all.

Q. 13. Can you tell us what year that was, or furnish us with any information by which we can fix the year?

A. It was the year I painted the barn and quarried the stone.

Q. 14. You have testified that Mr. Drawbaugh came to you at one time to borrow money; was that before or after he went to Mr. Mumper, as you have just testified?

A. Before.

Q. 15. When he went to you for money, what did you tell him?

A. I told him to go to Mr. Mumper; that I thought he could get it there.

[*Cross-examination waived.*]

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 29th day of January, 1884.

FRED. M. OTT,
Examiner.

ALFRED DITLOW.

Adjourned until January 30, 1884, at 10, A. M.

January 30, 1884, 10, A. M.

Examination postponed for want of witnesses, until January 31, 1884, at 10, A. M.

January 31, 1884, 10, A. M.

Examination resumed.

Present Mr. Storrow and Mr. Howson for complainants, and Mr. Hill and Mr. Jacobs for respondents.

BENJAMIN F. ZIMMERMAN, *being produced, affirmed, and examined, saith:*

Examined by Mr. Hill:

My age is 34; I reside in Allegheny county, Pennsylvania; my post-office is Hope Church; I am attending to stock in a dairy.

Q. 1. Did you formerly reside in Cumberland county, Penn.; if so, from what time to what time?

A. I did, from the 19th of June, 1866, to the 2d of September, 1875.

Q. 2. At what place or places in Cumberland county did you live during that time?

A. At Camp Hill, and no other place in Cumberland county. The post-office address is Camp Hill. When I first went there there was no post-office, and the place was called White Hall. Afterwards we got a daily mail, and the post-office was called Camp Hill.

Q. 3. While you lived in Cumberland county, were you acquainted with Daniel Drawbaugh, of Milltown, or not?

A. I was acquainted with him, although I was not familiarly acquainted with him.

Q. 4. During the same time, were you acquainted with Mr. William Sadler, and his son, Jacob M. Sadler, or not?

A. Yes, sir; I was acquainted with them both.

Q. 5. And during the same time, were you acquainted with George W. Mumper, of Lower Allen township, or not?

A. Yes, sir.

Q. 6. And during the same time were you acquainted with Wilson Walters or not?

A. Yes, sir.

Q. 7. While you lived in Cumberland county, did you know of Jacob M. Sadler and Daniel Drawbaugh having any business relations

together, and if yes state what you knew about it, so far as you remember it?

[*Objected to as not seeking the best evidence.*]

A. I know Jacob M. Sadler was an agent for Daniel Drawbaugh—or was employed by him, I don't know which—in an invention or patent; I don't remember exactly what it was. He was traveling and trying to sell or introduce—I don't know whether he had authority to sell or not—but he was traveling with reference to a patent or invention. I understood it was what is called a hydraulic ram. I understood it in that way.

Q. 8. Mr. William Sadler, (see complainant's printed rebuttal record, pp. 1036 to 1054 inclusive,) and also some of respondent's witnesses have testified that about the year 1871, Jacob Sadler and Daniel Drawbaugh did some business together as co-partners in the sale and putting in of hydraulic rams, Sadler furnishing the capital and the horse and wagon, and attending to the sales, and Drawbaugh attending to the mechanical work; was that the business that you refer to?

A. About him supplying the capital and so forth, the shortest way is—I heard Jake Sadler say that it was no use trying to do anything with Dan Drawbaugh, for that he was always working with that damned talking-machine; about the capital and horse and wagon—I can't say who furnished that.

Q. 9. When Jacob M. Sadler made that remark, was it about the time when he was having something to do with the hydraulic ram or at some later time?

A. I understood it was at the present time—I mean at the time when he was employed or was acting as agent for him—whichever.

Q. 10. Where did you hear Mr. Jacob M. Sadler make that remark?

A. At Camp Hill.

Q. 11. Did you ever hear Mr. Jacob M. Sadler's father, William Sadler, say anything about Mr. Drawbaugh's talking-machine at any time?

A. I heard him and Mr. Walters talking about it.

Q. 12. Where were you living at the time when you heard Mr. William Sadler and Mr. Walters talking about Mr. Drawbaugh's talking-machine?

A. At Camp Hill.

Q. 13. Was anybody else present at the time?

A. I couldn't say for sure, but I think George Mumper was present.

Q. 14. Do you mean George W. Mumper, of Lower Allen township?

A. Yes, sir; I think that is his name, but I don't know about the W.

Q. 15. Do you know of more than one George Mumper in Lower Allen township?

A. No, sir.

Q. 16. Give us your best recollection as to how long it was before you moved away from Camp Hill that you heard Mr. Sadler, Mr. Walters, and, you think, Mr. George W. Mumper, talking about Mr. Drawbaugh's talking-machine.

[*Objected to as asking for guess-work.*]

A. It was between 1868 and 1873.

Q. 17. While you lived at Camp Hill, was Drawbaugh's talking-machine the subject of a good deal of talk in the community or not?

A. As a general thing.

Cross-examined by Mr. Howson:

Cross-Q. 18. How long have you been living at your present residence in Allegheny county?

A. Since September 2d, 1875, to the present.

Cross-Q. 19. When did you leave your home for the purpose of coming here to testify in this case?

A. On Tuesday night last, between 2 and 3 o'clock.

Cross-Q. 20. Who, if anyone, traveled down here with you—of your acquaintance?

[*Objected to as immaterial.*]

A. William H. Martin.

Cross-Q. 21. At whose request did you come here to give your testimony in this case?

[*Same objection.*]

A. Mr. Drawbaugh subpœnaed me.

Cross-Q. 22. Which Mr. Drawbaugh, and when?

[*Same objection.*]

A. Henry or Harry, I think, is his name; I am not sure when, but I think it was last Tuesday one week ago.

Cross-Q. 23. How long was he with you on that occasion?

[*Same objection.*]

A. From the time we were near ready to take supper; he sat down and took supper with us, and then got up and went in a few minutes.

Cross-Q. 24. Who, if any one, before that, saw you and had any talk with you about testifying in this case?

[*Same objection.*]

A. Mr. Henry Drawbaugh had been there.

Cross-Q. 25. Had he been there more than once before?

[*Same objection.*]

A. Only once before he came with the subpœna.

Cross-Q. 26. When, or about when, was that once before?

[*Same objection.*]

A. Last fall some time.

Cross-Q. 27. How long was he with you on that occasion?

[*Same objection.*]

A. He might have been there a half an hour, more or less.

Cross-Q. 28. Before he visited you last fall, had you known about this suit?

[*Same objection.*]

A. I had heard nothing of the suit before.

Cross-Q. 29. Please tell us whereabouts it was that the talk which you say you overheard between Mr. William Sadler and Mr. Wilson Walters, which you have testified to in chief, occurred.

A. At Milltown.

Cross-Q. 30. While you were living in Cumberland county, did you have occasion to visit Milltown quite frequently?

A. I had been there several times.

Cross-Q. 31. About how far from Milltown was your house at Camp Hill?

A. About two miles, more or less.

Cross-Q. 32. Whereabouts in Milltown—in what place—was this talk which you overheard between Mr. Sadler and Mr. Walters?

A. At Mr. Eberly's place; it was so called his.

Cross-Q. 33. What place of Mr. Eberly's do you mean?

A. That question I don't understand—at Milltown.

Cross-Q. 34. My question means, what sort of a place—what business, if any, was carried on there?

A. It was a farm and they were farming the farm.

Cross-Q. 35. Whereabouts on the farm was it that this talk took place?

A. About the barn or barn-yard.

Cross-Q. 36. You have said that you think Mr. Mumper was there at the time; who else have you any recollection of having been present during that talk?

A. No one that I remember.

Cross-Q. 37. What was your business there at the time?

A. At a public sale.

Cross-Q. 38. Who else do you remember meeting there that day?

A. I have no remembrance of any particular one—have several, though; there was Hiram Drawbaugh and a great crowd of us playing ball.

[*Upon the answer being read over to the witness, he continues:*]

Did I say remembrance? that is a mistake there, for I could go on and mention a good many that I was acquainted with who were there.

Cross-Q. 39. Tell us, a little more particularly, precisely where it was on Mr. Eberly's premises that you overheard this talk between Messrs. Walters and Sadler?

A. In the barn-yard.

Cross-Q. 40. Are we to understand that Messrs. Walters and Sadler and yourself were alone in the barn-yard at the time, unless your recollection as to Mr. Mumper having been there is correct?

A. There were other men in the barn-yard, but none that were interested or took any interest in the conversation, that I remember.

Cross-Q. 41. Had you and Messrs. Walters and Sadler gone into the barn-yard together?

A. No, sir.

Cross-Q. 42. What were you doing there at the time?

A. Playing ball.

Cross-Q. 43. With whom?

A. Hiram Drawbaugh; he was there, for one.

Cross-Q. 44. Who else? I want to know the names of all the persons whom you recollect as having joined in that game of ball.

A. That is a question that I can't hardly answer.

Cross-Q. 45. You have told us that there was a public sale on Mr. Eberly's premises at that time; what was being sold there?

A. Personal property, farming utensils and so on, and stock.

Cross-Q. 46. Do you know how this sale had come about—what it was for?

A. Going to quit farming.

Cross-Q. 47. Who was going to quit farming?

A. That is the question; that is the trouble with the dates; I can't remember the dates; it was either Mr. Eberly or Mr. Wilson—I think Mr. Wilson was his name.

Cross-Q. 48. Who conducted that sale?

A. I can't say who was the auctioneer.

Examination taken, reduced to writing, and by the witness affirmed and subscribed to before me, this 31st day of January, 1884.

FRED. M. OTT,
Examiner.

B. F. ZIMMERMAN.

WILLIAM H. MARTIN, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

My age is 35; I reside about eight miles west of Pittsburgh, Penna.; I am a carpenter.

Q. 1. Where did you reside last before you moved to your present home?

A. In the borough of York, Penna.

Q. 2. When did you move from York, Penna., to your present home?

A. In April, 1883.

Q. 3. How long did you live in the borough of York?

A. It was very near seven years.

Q. 4. What month was it that you moved to York?

A. The first of April.

Q. 5. Do you remember in what year it was that you moved to York?

A. To the best of my knowledge it would be 1876.

Q. 6. In what county had you lived last before moving to York?

A. In Cumberland county, Penna.

Q. 7. When did you first begin to live in Cumberland county, Penna.?

A. To the best of my knowledge it was in July, 1870.

Q. 8. I suppose you remember the Centennial Exposition at Philadelphia, do you not?

A. Yes, sir.

Q. 9. Where were you living while that was going on?

A. In the borough of York.

Q. 10. When you moved to Cumberland county—which you think was in 1870—what was the first work you did, and for whom?

A. I worked for Mr. Abraham May, who was a carpenter, and put up the barn building on George Oyster's farm—or George Oyster was settling up the estate; I don't know how that was. Wilson Walters was farming the farm.

Q. 11. That work on Mr. Walters' barn, if I understand you, was the first work you did in Cumberland county; am I correct?

A. Yes, sir; my trade.

Q. 12. Did you ever do any work for old Mr. Daniel Hart, of Milltown, who died a few months ago, and who in his lifetime lived on the hill close to the village of Milltown?

A. Yes, sir.

Q. 13. What work did you do for him, and how long were you at it?

A. Built an addition to his house. I don't know how long we were at it; several weeks, though.

Q. 14. About what time was it that you did that work for Mr. Hart?

A. I don't recollect whether it was 1870 or not; I think it was that fall; it was not more than a year either way. To the best of my knowledge it was the fall of 1870, but I couldn't be positive of it.

Q. 15. Where did you board while you were putting up that addition to Mr. Hart's house?

A. With Mr. Hart.

Recess until two, P. M.

[*Deposition of Mr. Martin suspended at this point in order to take the deposition of Charles M. Dickinson.*]

Examination of William H. Martin by Mr. Hill continued:

Q. 16. While you lived in Cumberland county, did you become personally acquainted with Daniel Drawbaugh, of Milltown, or not?

A. No, sir; just merely to know him by sight.

Q. 17. Did you, while you lived in Cumberland county, overhear anything said about any of his inventions or not?

[*Objected to as not rebuttal.*]

A. Yes, sir.

Q. 18. What inventions of his did you hear spoken of while you lived in Cumberland county?

A. A patent water-ram, and a molasses faucet—I think they call them—and a talking-machine.

Q. 19. At how early a time did you hear his talking-machine spoken of?

[*Objection continued.*]

A. 1869, is the first I heard of it.

Q. 20. Mr. Daniel Hart, for whom you built the extension to his house, has been examined as a witness in this case, (see complainants' printed record, pp. 1512 to 1520 inclusive,) and has testified, in substance, that he didn't know as he had heard of Daniel Drawbaugh's talking-machine prior to the Centennial; if you have any knowledge as to when Mr. Hart knew or had heard of Mr. Drawbaugh's talking-machine, will you state when it was and how you happened to know about it at the time?

[*Objected to as incompetent.*]

A. We talked about it at the time we built the extension to his house. To the best of my knowledge it was in 1870, but it might have run into 1871; when we would go in to meals why, of course, we would talk about it.

Q. 21. Do you mean that it was talked about at the table, in his family, while you were working at the extension to his house?

[*Objected to as leading.*]

A. Yes, sir.

Q. 22. When you first went to Cumberland county, where did you board?

A. Through the week, while we were putting up Mr. Walters' barn, we boarded with Mr. Walters; Sunday boarding we got at Mr. James May's, at Oyster's Point.

Q. 23. Who kept the tavern at Oyster's Point at that time?

A. James May, at that time.

Q. 24. Who kept that tavern after Mr. May?

A. Mr. John Keefauver.

Q. 25. Where does Mr. Keefauver live now, and what is his business, if you know?

A. He lives in Harrisburg; he is a groceryman now.

Q. 26. Did you ever go down to Mr. Drawbaugh's shop to see his talking-machine; if so, when did you first go there?

[*Objected to as not rebuttal, and also objected to as leading.*]

A. Yes, sir; in 1870 I went there, but I didn't get to see it at that time.

Q. 27. Did anybody go with you there at that time?

A. No, sir.

Q. 28. Why didn't you go to see it at that time?

A. Mr. Drawbaugh had gone away.

Q. 29. Did you ever go down to see it afterwards or not?

[*Objected to as leading.*]

A. Yes, sir.

Q. 30. Did you go alone, or did anybody go with you?

A. John Keefauver went along.

Q. 31. Did you go down to Milltown on purpose to see the talking-machine, or did you have other business at Milltown that day?

[*Objections continued.*]

A. Had other business.

Q. 32. What business?

A. Went to the shoemaker's for a pair of boots.

Q. 33. What was the shoemaker's name, if you remember?

A. George Hosler.

Q. 34. Where was he doing business as a shoemaker at that time?

A. In Milltown.

Q. 35. Did you go to Mr. Hosler's shop first and then go down to Mr. Drawbaugh's shop, or did you go to Mr. Drawbaugh's shop first?

A. I went to Hosler's shop.

Q. 36. Did Mr. Keefauver accompany you down to Mr. Drawbaugh's shop or not?

A. He went along with me down.

Q. 37. When you got down to Mr. Drawbaugh's shop, whom did you find there?

A. Mr. Daniel Drawbaugh himself.

Q. 38. What did you and Mr. Keefauver do there that day, if anything?

A. Talk through the talking-machine.

Q. 39. In what part of the shop were you when talking through this talking-machine, and in what part of the shop was Mr. Keefauver?

A. I was up in the attic—you may call it upstairs—and Keefauver was down in the basement.

Q. 40. By up in the attic do you mean up in the roof of the building?

A. The last floor as you go up, I mean.

Q. 41. Were the rafters and roof directly overhead, or was there a ceiling or floor overhead?

A. I didn't take notice whether there was a ceiling or not. It was the highest addition to the house into which you could go. I don't know whether there was a ceiling between that and the rafters or not; I didn't take notice to that.

Q. 42. Did you see any clocks there in the shop on that visit?

A. I don't remember about the clock.

Q. 43. When you and Mr. Keefauver were operating the talking-machine there that day, did you both talk through the machine or only one of you; and if only one of you, which one?

A. Both of us.

Q. 44. Did you talk to each other through the machine or talk to somebody else?

A. To each other.

Q. 45. While talking to each other through the machine, did you exchange places; or did you remain in the attic all the time, and Mr. Keefauver in the basement all the time?

A. To the best of my knowledge we changed situations or places.

Q. 46. Did you hear and understand through the machine what Mr. Keefauver was talking into it or not?

[*Objected to as leading.*]

A. I did at that time; yes, sir.

Q. 47. Do you remember whether you or Mr. Keefauver held any conversation back and forth with the machine or not?

[*Same objection.*]

A. No conversation in particular; we talked, but I don't remember what we did talk—some foolishness we did talk, but I don't remember what.

Q. 48. What I want to get at is this: whether you talked through the machine and Mr. Keefauver answered back through the machine or not?

[*Same objection.*]

A. Yes, sir.

Q. 49. While you were living in Cumberland county, did you hear a good deal of talk around in the community about Drawbaugh's talking-machine or not?

[*Objected to as leading and incompetent.*]

A. Yes, sir.

Q. 50. Did you ever hear Abraham May say anything about it; if so, at how early a time?

[*Same objection.*]

A. Oh, I often talked about it; in 1870, to the best of my knowledge, he talked about it, when I worked for him.

Q. 51. Where was Mr. May living at that time?

A. At Camp Hill, Cumberland county.

Q. 52. When was the last time that you were ever in Mr. Drawbaugh's shop at Milltown?

A. Last winter.

Q. 53. What did you go there for then?

A. To get him to make a match-splitter, or machine to split matches.

Q. 54. Whom did you see there, at his shop, at that time last winter?

A. Nobody but his foreman there.

Q. 55. Do you know the foreman's name?

A. Heiges, I think, is his last name; I don't know his first name.

Q. 56. Did Mr. Heiges tell you where Mr. Drawbaugh was at that time?

[*Objected to as irrelevant and immaterial.*]

A. I don't remember whether he just told us where he was or not; he told us he wasn't at home; he may have told us he was at town or somewhere; I don't remember; he told us he wasn't there, anyway.

Q. 57. When was the last time that you were ever at Mr. Drawbaugh's shop before your visit there last winter?

A. The time me and Keefauver were there.

[*Deposition objected to as not rebuttal, and cross-examination, de bene esse, by Mr. Howson.*]

Cross-Q. 58. Who went with you to Drawbaugh's shop last winter?

A. John A. Myers, of Siddonsburg, York county.

Cross-Q. 59. From what place in Cumberland county did you move to York?

A. Wormleysburg, Cumberland county.

Cross-Q. 60. How long had you been living there, and from where did you move there?

A. Two years—I moved there in 1874 or 1873; I don't know whether it was two years or one year; I couldn't be positive about it. I moved to Wormleysburg from my father-in-law's home on Feeman's farm, down along the river below Bridgeport.

Cross-Q. 61. How long were you working for Abraham May?

A. Two years, to the best of my knowledge, that I know or can get at it—two years.

Cross-Q. 62. Who worked with you at the addition to Mr. Hart's house?

A. Abe May.

Cross-Q 63. No one else?

A. I think there was another man there named Louis Frysinger; I don't remember, but I think so; I ain't positive whether he was along.

Cross-Q. 64. Who was at the table when, as you have testified, you heard Mr. Hart speak of Drawbaugh's talking-machine?

A. Myself and Mr. May and Hart's family.

Cross-Q. 65. Just name the members of Hart's family who were there.

A. I can't do that—to name them all. Daniel is the old man's name, to my knowledge. His son we always called Cal. He had two daughters, whose names I don't recollect. I don't remember whether the old man was a widower or not.

Cross-Q. 66. When did you last see Mr. Abraham May?

A. I couldn't give no date on that; it was some time several years ago.

Cross-Q. 67. How long have you been aware that this suit was going on?

A. Not very long. I can't just say—about nine months.

Cross-Q. 68. From whom did you learn it?

A. I saw it published.

Cross-Q. 69. Who first asked you what, if anything, you knew about the matter, and when?

Q. 48. What I want to get at is this: whether you talked through the machine and Mr. Keefauver answered back through the machine or not?

[*Same objection.*]

A. Yes, sir.

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[*Objected to as leading and incompetent.*]

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Q. 54. Whom did you see there, at his shop, at that time last winter?

A. Nobody but his foreman there.

Q. 55. Do you know the foreman's name?

A. Heiges, I think, is his last name; I don't know his first name.

Q. 56. Did Mr. Heiges tell you where Mr. Drawbaugh was at that time?

[*Objected to as irrelevant and immaterial.*]

A. I don't remember whether he just told us where he was or not; he told us he wasn't at home; he may have told us he was at town or somewhere; I don't remember; he told us he wasn't there, anyway.

Q. 57. When was the last time that you were ever at Mr. Drawbaugh's shop before your visit there last winter?

A. The time me and Keefauver were there.

[*Deposition objected to as not rebuttal, and cross-examination, de bene esse, by Mr. Howson.*]

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Cross-Q. 67. How long have you been aware that this suit was going on?

A. Not very long. I can't just say—about nine months.

Cross-Q. 68. From whom did you learn it?

A. I saw it published.

Cross-Q. 69. Who first asked you what, if anything, you knew about the matter, and when?

A. Squire Shoop; it must have been last September; he wrote to me; he didn't ask me personally.

Cross-Q. 70. Have you got that letter?

A. I haven't with me; I think I have it in my trunk at home beyond Pittsburgh.

Cross-Q. 71. Did anybody call on you after that at your place about the matter, and if yes, who?

A. Yes, sir; Mr. Henry Drawbaugh.

Cross-Q. 72. When was that?

A. Just before last Christmas holidays sometime; I can't give you the month.

Cross-Q. 73. How long was Mr. Drawbaugh with you on that occasion?

A. He wasn't over an hour and a half at the outside, and most of the time we were looking at the stock.

Cross-Q. 74. Who worked with you on Mr. Walters' barn?

A. Abe May, Johnny Gilmore, Jake Gilmore, Louis Frysinger, Henry Shoop, and Eli Stair.

Cross-Q. 75. Did all of these board during the week-days with Mr. Walters?

A. Yes, sir.

CrossQ. 76. For whom did you work after leaving Mr. May's employment?

A. Samuel Myers.

Cross-Q. 77. Where, and how long?

A. One summer, building a barn for Johnny Musser, and a house. That was right back of Camp Hill, Cumberland county.

Cross-Q. 78. For whom and where did you work after that?

A. To the best of my knowledge I went on the railroad—bridge building for the N. C. Company.

Cross-Q. 79. How long were you at that, and what work did you go to after that?

A. I was about eight years at that. I went out to Pittsburgh on the Smithfield street bridge after that.

Cross-Q. 80. When you and Mr. Keefauver visited Mr. Drawbaugh's shop, where did you start from on your trip, and what time of day was it?

A. We started from Oyster's Point tavern. He kept the hotel then.

I don't know what time we started. It would be near the middle of the day some time. I didn't pay no attention to that.

Cross-Q. 81. Where else, besides Hosler's and Drawbaugh's, did you and Mr. Keefauver visit that day?

A. I don't know whether we visited any other place or not. I suppose we went on home then.

Cross-Q. 82. How long were you at Mr. Drawbaugh's shop at that time?

A. I don't know; we might have been there maybe an hour—long enough to talk through the talking-machine, anyway.

Cross-Q. 83. Was all your time there spent in talking through the talking-machine?

A. Yes, sir; I think so—while we were at the shop. We might have had a few words with Mr. Drawbaugh; I don't recollect.

Cross-Q. 84. You don't recollect that you did anything else, or saw anything else, but the talking-machine; is that it?

A. Not as I remember of; I don't know—I don't think I did; if I did, I don't remember.

Cross-Q. 85. In how many rooms of the shop were you that day?

A. The basement, and what I call the shop on the first floor, and the attic; that would make three rooms—three departments.

Cross-Q. 86. Which of these three did you first go into?

A. The middle department, or shop that he works in.

Cross-Q. 87. What was going on there?

A. I can hardly tell what he was just working at, or what he was doing; while we were there he didn't do anything.

Cross-Q. 88. Did you see nobody but Mr. Drawbaugh on any part of the premises?

A. Not that I remember of; I don't think I did at that time.

Cross-Q. 89. Describe the arrangement of what you have called the attic.

A. I don't know whether it was ceiled or not; I don't remember whether there was anything but the rafters and shingles or not; it merely would be a by-place.

Cross-Q. 90. What was the size of the place that you called the attic?

[*Objected to as calling for mere guess-work.*]

A. It may have been twenty-four feet long and twenty feet wide;

of course that is merely a guess, as I don't know the length of the building; in the center, of course, it would be higher, and then it slopes down like all pitched roofs do.

Cross-Q. 91. Did you go to this attic or to the basement first, after your arrival at the shop?

A. I went to the attic first, after I was in the shop.

Cross-Q. 92. Who first talked through the machine—you or Mr. Keefauver?

A. I don't know which one talked first; we both talked through it back and forward, but I don't know which one talked first.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 31st day of January, 1884.

FRED. M. OTT,
Examiner.

WILLIAM H. MARTIN.

CHARLES M. DICKINSON, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

My age is forty years; I reside at Marysville, Perry county, Penn'a; I am shop clerk for the Northern Central Railway Company, at Marysville; I have been shop clerk for that company at that place from September, 1865, to the present time.

Q. 1. Do you know George W. Hayes, of Rockville, Dauphin county, Penn'a?

A. Yes, sir.

Q. 2. Did he ever work for the Northern Central Railroad Company?

A. He did.

Q. 3. In what capacity did he work for said company?

A. He was hired first as a blacksmith-helper, and he was afterwards hired as watchman on the coal shutes or coal wharf, whichever you choose to call it. He was hired first as a blacksmith-helper, and then continued right along in the employ of the company, but was transferred to the coal wharf.

Q. 4. Have you here the original time-books of the Northern Central Railway Company, kept at Marysville Station, and containing the entries of the workmen's time made in the books from day to day, as as they performed their work?

A. Yes, sir; I have the books here.

Q. 5. Will you please refer to said books and state when Mr. Hayes began to work for said company as blacksmith's helper, and how long he continued to work in that capacity, and when he was transferred to the coal wharf or shutes, and how long he worked at the coal wharf or shutes, and when he last worked for the company?

A. Mr. Hayes began working for the company as blacksmith's helper on the 16th day of March, 1874. He continued working in that capacity of blacksmith's helper until the 17th day of March, 1876; on that day he was transferred to the coal wharf, as watchman; he worked on the coal wharf until the 30th of June, 1877. That was the day that he quit the service of the company at Marysville. He has not worked there for that company since.

Q. 6. While he was working for that company on the coal wharf or shutes, did he work as night-watchman or day-watchman?

A. As night-watchman—we had no day-watchman hired. We never had a watchman in daylight on the wharf.

Cross-examination waived by Mr. Howson.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 31st day of January, 1884.

FRED. M. OTT,
Examiner.

CHARLES M. DICKINSON.

JOHN F. KEEFAUVER, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

My age is forty-one; I reside in Harrisburg, Penn'a; I am in the grocery business now; I keep a grocery store myself.

Q. 1. Did you formerly keep the tavern at Oyster's Point, Cumberland county, Pa.?

A. Yes, sir.

Q. 2. How long did you keep that tavern?

A. Two years.

Q. 3. Do you know Mr. Daniel Drawbaugh, of Eberly's Mills, or Milltown, Cumberland county?

A. Yes, sir.

Q. 4. Were you ever at his shop at Milltown?

A. Yes, sir.

Q. 5. How many times were you ever at his shop in your life?

A. I was there twice.

Q. 6. Was anybody there with you the first time you went there at his shop; if so, who?

A. Mr. Martin, who was here to-day on the witness-stand, was with me. I don't know his given name.

Q. 7. Do you recollect what you and Mr. Martin went to Milltown for that day?

A. We went there for a pair of boots for Mr. Martin.

Q. 8. To whose place of business did you go to get the boots?

A. We went to a shoemaker's—I really forget his name just now; I didn't know his name at the time, either, but I heard it afterwards.

Q. 9. Do you think you would know the name if you heard it again now?

[*Objected to as incompetent.*]

A. Yes, sir.

Q. 10. Was it Hosler?

[*Same objection.*]

A. Yes, sir.

Q. 11. Did you go to Mr. Hosler's shop first, or to Mr. Drawbaugh's shop first?

A. To Mr. Hosler's first.

Q. 12. When you and Mr. Martin got down to Mr. Drawbaugh's shop that day, whom did you find there, if anybody?

A. Mr. Drawbaugh.

Q. 13. If anything of interest took place there that day, will you tell us what it was?

[*Objected to as not rebuttal; this objection to apply to all succeeding questions upon the same line of inquiry.*]

A. Yes, sir; we was in and seen that talking-machine of Mr. Drawbaugh's.

Q. 14. Was any talking done through it that day or not?

[*Objected to as leading.*]

A. Yes, sir.

Q. 15. Who talked through the machine that day?

A. Mr. Martin and myself.

Q. 16. When you and Mr. Martin first began to talk through the machine that day, where were you stationed and where was he stationed?

A. I was stationed in the cellar and he was stationed in the attic.

Q. 17. While you were stationed in the cellar, did you talk through the machine, or listen at it, or both?

A. Both.

Q. 18. When you listened at the machine, could you hear and understand what Mr. Martin was saying through the apparatus or not?

[*Same objection.*]

A. Yes, sir; we could hear.

Q. 19. Did you carry on any conversation through the machine with Mr. Martin?

[*Objected to as leading.*]

A. Yes, sir.

Q. 20. After you had talked through and listened at the machine in the cellar, and Mr. Martin in the attic, what then was done, if anything?

A. We looked around at his clocks a little while.

Q. 21. Were you in the attic that day or not?

[*Objected to as leading.*]

A. Yes, sir; I was.

Q. 22. What did you do up there, if anything?

A. I went up to talk through the machine again.

Q. 23. And who talked through the machine with you at that time while you were in the attic?

A. Mr. Martin.

Q. 24. Where was he talking while you were in the attic?

A. He was down in the cellar.

Q. 25. When you and Mr. Martin had thus changed places, you taking your station in the attic and he in the cellar, did you and he again carry on conversation through the machine so as to be heard and understood through it?

[*Objected to as leading.*]

A. Yes, sir.

Q. 26. What kind of a place was that attic? Give us a description of it.

A. It was up right under the roof where the rafters are.

Q. 27. And what kind of a place was the cellar?

A. It was right down on the ground.

Q. 28. Any floor to it except the ground?

A. No, sir.

Q. 29. There were two stories in the building between the cellar and the attic, were there not?

[*Objected to as leading.*]

A. Yes, sir.

Q. 30. Who, if anybody, instructed you and Mr. Martin how to use the machines, that day?

A. Mr. Drawbaugh.

Q. 31. Did he tell you what use he intended to put his talking-machine to? If so, what did he tell you about that?

A. He said he intended to have them used in place of telegraphing.

Q. 32. Did he tell you whether they were operated by electricity or not?

[*Objected to as leading.*]

A. No, sir.

Q. 33. What was your understanding about that at the time?

[*Objected to as incompetent.*]

A. I had been told it worked by electricity.

Q. 34. Then you had heard of Mr. Drawbaugh's talking-machines before you went there to his shop, had you?

[*Objected to as leading.*]

A. Yes, sir.

Q. 35. How long before?

A. About three years.

Q. 36. Before you went there to Mr. Drawbaugh's shop, had you heard a good deal about that talking-machine around in the neighborhood there where you lived, or not?

[*Objected to as leading.*]

A. Yes, sir; I did.

Q. 37. Do you remember where you were when you first heard of Mr. Drawbaugh's talking-machine?

A. Yes, sir.

Q. 38. Where?

A. Seven miles west of Carlisle.

Q. 39. You have testified that you made two visits to Drawbaugh's shop, and that the visit with Mr. Martin was the first of the two; how long after the visit with Mr. Martin was it that you made the second visit to Mr. Drawbaugh's shop?

A. About one year.

Recess until 7.30 P. M.

Q. 40. Do you remember why you went to Milltown at the time you made the second visit to Mr. Drawbaugh's shop?

A. I had some business with George Heck, and went to see him.

Q. 41. Do you mean George B. Heck, who was at one time a candidate for sheriff?

A. Yes, sir.

Q. 42. Then your last visit to Mr. Drawbaugh's shop was while Mr. George B. Heck was still living, was it?

A. Yes, sir.

Q. 43. How long was it before his death?

A. It was about three months and a half.

Q. 44. In the spring of the year?

[*Objected to as leading.*]

A. About the middle of April.

Q. 45. In what year was it?

A. 1873.

Q. 46. In what year was your first visit to Mr. Drawbaugh's shop, and at what season of the year?

A. It was in the spring of the year of 1872.

Q. 47. When you were at Mr. Drawbaugh's shop in spring of 1873, who, if anybody, was with you?

A. Jacob M. Sadler.

Q. 48. Did you see any talking-machine at Mr. Drawbaugh's shop on that occasion or not?

[*Objected to as leading.*]

A. Yes, sir.

Q. 49. What, if anything, was done with them on that occasion?

A. We talked through them.

Q. 50. Who talked through them at that time?

A. Jacob M. Sadler and myself.

Q. 51. Where were the talking-machines when Jacob M. Sadler and you talked through them at that time?

A. They were in the cellar and in the attic.

Q. 52. Where did you station yourself while operating the machines?

A. I was in the cellar.

Q. 53. Did you and Mr. Sadler talk back and forth through the machines, or only talk one way?

[*Objected to as leading.*]

A. We talked back and forth through the machines?

Q. 54 Did you hear and understand what was said through the machines at that time or not?

[*Same objection.*]

A. Yes, sir; we did.

Q. 55. On both of those occasions when you were at Mr. Drawbaugh's shop, were you or were you not able to carry a conversation on, through the machine, with a man stationed at the other end of the line?

[*Objected to as leading.*]

A. We were.

Q. 56. When did you first hear of the Bell telephone?

A. I thought this was Mr. Drawbaugh's telephone that is in operation till last fall some time.

Q. 57. Do you refer to the Bell telephones as the telephones which you thought were Mr. Drawbaugh's telephone until some time last fall?

[*Objected to as leading and incompetent.*]

A. Yes, sir.

Q. 58. When did you last see or have any communication with Mr. William H. Martin before to-day?

A. In 1876.

[*Deposition objected to as not rebuttal, and cross-examination, de bene esse, by Mr. Howson.*]

Cross-Q. 59. How long have you been living in Harrisburg?

A. About six years.

Cross-Q. 60. Have you been in the grocery business during all that time in Harrisburg?

A. Not quite five years.

Cross-Q. 61. What was your business before that?

A. I worked at blacksmithing.

Cross-Q. 62. Where, and for how long?

A. In the Harrisburg car shops four years and a half; but I kept grocery part of the time that I worked there.

Cross-Q. 63. When did you move away from Cumberland county?

A. In 1876.

Cross-Q. 64. Whereabouts in Cumberland county were you living down to 1876?

A. I lived at Oyster's Point from April, 1872, to April, 1874. I lived next one year at Sporting Hill, and then a little over a year at Mechanicsburg.

Cross-Q. 65. Whereabouts is Sporting Hill?

A. It is two miles west of Oyster's Point, on the turn-pike.

Cross-Q. 66. I understand that while you lived at Oyster's Point you were keeping tavern; is that correct?

A. Yes, sir.

Cross-Q. 67. What was your occupation while you were living at Sporting Hill, and what while you were living at Mechanicsburg?

A. At Sporting Hill I kept tavern, and at Mechanicsburg I was butchering.

Cross-Q. 68. Was it from the spring of 1875 to the spring of 1876 that you lived at Mechanicsburg, or what time in the year of 1876 was it that you moved from Mechanicsburg?

A. I moved from Mechanicsburg in June, 1876.

Cross-Q. 69. When had you moved to that place?

A. In the spring of 1875.

Cross-Q. 70. What other places besides the shoemaker's and Mr. Drawbaugh's shop did you and Mr. Martin visit on the occasion that you have testified to in chief?

A. No other place at Eberly's Mills.

Cross-Q. 71. Well, what other place not at Eberly's Mills did you visit with Mr. Martin at that time?

A. No other place, that I remember.

Cross-Q. 72. If I understand your testimony, you went to Eberly's

Mills on that occasion simply to accompany Mr. Martin, whose business was about a pair of boots; is that it?

A. Yes, sir.

Cross-Q. 73. You have said that on that day you looked awhile at Mr. Drawbaugh's clocks; what clocks did you see, and how many of them, and where were they?

A. There was three that I took notice to in his shop.

Cross-Q. 74. Tell us what these three clocks were like—how large they were. Describe them as nearly as you recollect them.

A. They were common-sized clocks. The reason that I took particular notice of them was that the pendulums all swung to this side at once, and then swung to that side at once, and he told me they were all run by electricity—the reason they done that.

Cross-Q. 75. Then these three clocks were all in one room, were they?

A. Yes, sir.

Cross-Q. 76. And all running together when you saw them?

A. Yes, sir.

Cross-Q. 77. Whereabouts in the shop was this?

A. They were standing at the wall on the second floor.

Cross-Q. 78. What else did you see in the shop at that time besides the talking-machine and these three clocks?

A. I seen a good bit of machinery—some lathes and other machinery in there—a water-wheel.

Cross-Q. 79. How long were you in the shop that day?

A. I suppose about an hour.

Cross-Q. 80. How much of that time did you spend at the talking-machine?

A. I suppose maybe about fifteen minutes.

Cross-Q. 81. What were you doing in the shop during the remaining three quarters of an hour or so?

A. We were talking to Mr. Drawbaugh most of the time.

Cross-Q. 82. You and Mr. Martin were drinking and intoxicated that day, were you not?

A. No, sir; I wasn't.

Cross-Q. 83. I gather from your last answer that Mr. Martin was; is that correct?

A. Not that I know of.

Cross-Q. 84. Did you not hear Mr. Martin so state to any person in the city of Harrisburg to-day?

A. I heard him say that he didn't know for sure or not. I didn't hear him say he was intoxicated, and I didn't notice it on him if he was. I heard him say that he had been drinking before we went over and felt it a little, but I didn't count he was intoxicated at the time.

Cross-Q. 85. To whom was it that you heard Mr. Martin make this admission that he had been drinking at the time?

[*Objected to as immaterial.*]

A. I heard him make it this forenoon, but I can't remember whom to. There is men here that I don't know, but I think Mr. Lute McGary was the one.

Cross-Q. 86. What else besides talking-machines did you notice at Mr. Drawbaugh's shop on your second visit there?

A. Just about the same that we did at the first time. There were a good many machines there that I didn't know the use of.

[*Deposition suspended at this point to take the deposition of J. Harper Seidel.*]

February 1, 1884.

Examination resumed pursuant to adjournment.

Present, same counsel.

Cross-examination of John F. Keefauver by Mr. Howson continued:

Cross-Q. 87. What was going on in Mr. Drawbaugh's shop at the time of your second visit there, and who besides Mr. Daniel Drawbaugh did you meet there at that time?

A. We didn't meet anybody besides Mr. Drawbaugh, and he was working on some patterns at the time.

Cross-Q. 88. What parts of the shop were you in that day, and how long were you there?

A. We were in the cellar and in the attic, and were there about half an hour.

Cross-Q. 89. All that time at the talking-machine? If not, what else did you do there?

A. We were at the talking-machine a little while, and then talking to Mr. Drawbaugh. He showed us around through the shop.

Cross Q. 90. Tell us what he showed you on that occasion besides the talking-machine.

A. He had a molasses faucet there that he was showing us, and we looked over his clocks again, and some other machinery that he had there.

Cross-Q. 91. Was that the first you had seen of the molasses faucet?

A. I seen one of nearly the same kind down in Maryland a few years before.

Cross-Q. 92. The meaning of my question was, was that the first time you had seen a molasses faucet at Mr. Drawbaugh's place, or the first time Mr. Drawbaugh had shown you such a thing?

[*Objected to as immaterial, and as new matter not referred to in the examination-in-chief.*]

A. Yes, sir.

Cross-Q. 93. What other machinery did he show you on that occasion outside of clocks, talking-machines and molasses faucets?

[*Same objection.*]

A. He showed us machinery that he used in his work; I didn't really know what they were for; we just looked over them—saws and so on.

Cross-Q. 94. How many clocks did you see in place on this visit?

A. I only mind of three.

Cross-Q. 95. Did they appear to be the same clocks and in the same place as those you had seen before there?

[*Objected to as calling for inference and guess-work.*]

A. Yes, sir.

Cross-Q. 96. You say you were in both cellar and attic of the place that day—which part did you first visit?

A. The cellar.

Cross-Q. 97. What did you afterwards go to the attic for?

A. I don't recollect what I went up for; I didn't talk from the attic down that day.

Cross-Q. 98. What did you do up in the attic that day, and how long were you there, and who was with you in the attic?

A. Jacob Sadler was with me, and we looked around among some old rubbish that was up there; I don't know how long we were up

there; he had some things up there that he had never got completed altogether—different machinery.

Cross-Q. 99. When was it that you quit blacksmithing at the Harrisburg car-shops?

A. The 1st of August, 1882.

Cross-Q. 100. How long have you known of telephones being in use in Harrisburg here?

A. I don't know how long it is.

Cross-Q. 101. Can't you give us an idea of the time when, and place where, you first say a telephone in any establishment in Harrisburg?

A. The first one I saw was at the car-works; I don't mind how long ago it was.

Re-direct by Mr. Hill:

Q. Q. 102. When you and Mr. Martin went down to Milltown together to get the boots from Mr. Hosler, how did you go down—did you ride or walk?

A. We went down in a buggy.

Q. Q. 103. Did you drive Mr. Martin down?

A. Yes, sir; it was my horse and buggy.

Q. Q. 104. State whether or not any intoxicating liquors were drank on the way down, or at Milltown, or on the way back.

A. No, sir; there was none drank on the way down, or on the way back, or while we were there.

Q. Q. 105. When your family first lived in Harrisburg, where were you working?

A. I was working at Falling Waters in Western Virginia.

Q. Q. 106. How long did you work there?

A. About a year and a half—near that time.

Q. Q. 107. Do you remember in what years that was?

A. In 1876 I went there.

Q. Q. 108. In cross-question 59 you were asked how long you had been living in Harrisburg, to which you answered, "About six years." Did you mean six years counting in the time when you were in West Virginia, or six years since that time?

A. Six years since that time.

Q. Q. 109. If I understand you correctly, your family lived in Harrisburg from the time you moved away from Mechanicsburg. Am I right about that or not?

A. Yes, sir.

Re-cross-examination by Mr. Howson:

Re-cross-Q. 110. At what and for whom were you working while at Falling Waters, West Virginia?

A. I was making railroad ties for Mr. Biddle, of Carlisle. He is president of the Cumberland Valley railroad.

Re-cross-Q. 111. What was the distance from your tavern at Oyster's Point to Milltown or Eberly's Mills?

A. About two miles and a half.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 1st day of February, 1884.

FRED. M. OTT,
Examiner.

JOHN F. KEEFAUVER.

J. HARPER SEIDEL, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

My age is 33; I reside in Marysville, Perry county, Penna.; occupation, iron master; I manufacture blooms at Marysville forge.

Q. 1. Do you know John H. Rhoads, who lives up the Fishing Creek valley road, in Perry county?

A. I do, sir.

Q. 2. Did you ever employ Mr. Rhoads to sled wood out of the tract on the mountain called the Kell tract?

A. Yes, sir.

Q. 3. Will you describe, briefly, the location of that Kell tract?

A. It is situated about three and a half miles west of Marysville, on the mountain on the south side of the valley.

Q. 4. Do your account-books contain any entries showing the time when that wood was cut and sledded out of the Kell tract?

A. Yes, sir.

Q. 5. Will you please refer to them and state when that job of cutting wood on the Kell tract was commenced, and when it was finished?

[*Witness refers to books.*]

A. I can't tell exactly when it was commenced, but the first wood was taken up on April 19th, 1876. The cutting was commenced some

A. Yes, sir.

Re-cross-examination by Mr. Howson:

Re-cross-Q. 110. At what and for whom were you working while at Falling Waters, West Virginia?

A. I was making railroad ties for Mr. Biddle, of Carlisle. He is president of the Cumberland Valley railroad.

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A. About two miles and a half.

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FRED. M. OTT,
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A. Yes, sir.

Q. 5. Will you please refer to them and state when that job of cutting wood on the Kell tract was commenced, and when it was finished?

[*Witness refers to books.*]

A. I can't tell exactly when it was commenced, but the first wood was taken up on April 19th, 1876. The cutting was commenced some

time in the winter of 1875–6; the last entry here of taking up was on October 6th, 1876; the job wasn't finished then, but I have another entry here which shows that I settled with Mr. Rhoads January 6th, 1877. I can't tell exactly when the job was finished, but it was finished some time during that winter of 1876–7, and before January 6, 1877.

Q. 6. Did you ever employ Mr. Rhoads at sledding any wood from the Kell tract after that?

A. He sledded no cord-wood from the job after that, but I settled with him on May 31, 1877, for hauling some rails out of that Kell tract; I can't tell when the rails were hauled, but they were hauled some time prior to that. The records show that that was the last work he ever did on that Kell tract for us.

Q. 7. What was that cord-wood used for?

A. We charred it and used it at our forge.

Cross-examined by Mr. Howson:

Cross-Q. 8. Has Mr. Rhoads continued to cut and haul wood for use at your forge down to the present year; if not, how lately has he done so?

A. He sledded none after the Kell job of 1876 until 1879, when he sledded wood on the Grubb job, and in 1880 in the Coover job; the first entry in 1879 was April 12, and that ran on until September, 1879; in 1880 he commenced to work in February, and ran on until October; that was the last work he did. [Refers.] I find also that on the 28th of February, 1878, he has credit for cutting forty-two cords of wood, and making some ties and rails, on what we call the Pine Grove job.

Re-direct by Mr. Hill:

Q.Q. 9. Please state the name of your firm.

A. Seidel Brothers.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 31st day of January, 1884.

FRED. M. OTT,
Examiner.

J. HARPER SEIDEL.

Adjourned until February 1, 1884, at 10, A. M.

GEORGE W. HAYES, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

My age is fifty-six; residence, Rockville, Susquehanna township, Dauphin county, Pennsylvania; I am a blacksmith.

Q. 1. Mr. Charles W. Dickinson, who was examined here as a witness yesterday, testified that a Mr. George W. Hayes, of Rockville, Dauphin county, Pennsylvania, worked for the Northern Central Railroad Company, from March 17, 1876, to June 30, 1877, as a night watchman at the coal shutes or coal wharf at Marysville, Perry county; are you the Mr. George W. Hayes to whom he refers?

A. Yes, sir.

Q. 2. Where did you live while you were working as night watchman for the Northern Central Railroad Company?

A. I lived about a hundred yards from the coal shutes.

Q. 3. The exact location of those coal shutes has not yet been stated in evidence; will you tell us just were they were?

A. They were about north of the round-house; they may have been about seventy-five or a hundred feet from it; they were near the center of the village of Marysville.

Q. 4. While you lived at Marysville, did you know George W. Kissinger, who lived on the Thomas Draper farm, just back of the town?

A. Yes, sir.

Q. 5. State whether or not you ever had any conversation with him at any time on the subject of a hydraulic ram for forcing the water from the spring to his house on the Draper farm?

A. I had.

Q. 6. Where were you working at the time when you first conversed with Mr. Kissinger on the subject of said hydraulic ram?

A. The coal shutes.

Q. 7. Do you remember in what year it was, and at what season of the year, that you had that first conversation with him?

A. It was in 1876, some time in May or June, or along there.

Q. 8. What did Mr. Kissinger say about the ram at that first conversation?

A. He said he was getting on; and he was boring pipes at that time, he said.

Q. 9. Did you ever have any conversation with him about the ram at that time, or was that the only conversation?

A. I had different conversations about it.

Q. 10. Do you remember anything that he said about it, in any of those subsequent conversations; if so, what?

A. Not any more than that he told me that he was going to fetch it.

Q. 11. Are you able to state in what year it was that he told you he was going to fetch it, and where you were working at that time?

A. It was in 1876, about the middle of the summer; I was working at the coal shutes at the time; I worked there till 1877.

Q. 12. While Mr. Kissinger lived on the Draper farm, were you ever at his dwelling-house, or at his barn, or at any point between his house and barn?

A. No, sir; I have been along the road, but that is all.

[*Cross-examination waived by Mr. Howson.*]

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 1st day of February, 1884.

FRED. M. OTT,
Examiner.

G. W. HAYES.

JOHN H. RHOADS, *being produced, affirmed, and examined, saith:*

Examined by Mr. Hill:

My age is 40; I reside in Rye township, Perry county, Penn.; I am a laborer.

Q. 1. How long have you resided where you now live?

A. Almost fourteen years.

Q. 2. It is in evidence in this cause that at one time Mr. George W. Kissinger, who lived on the Thomas Draper farm just back of the village of Marysville, had a hydraulic ram put in on the Draper farm to force water from the spring to the dwelling-house, and it has become material to ascertain when that ram was put in; if you have any knowledge on that subject will you please state what you know about it?

A. Yes, sir. In 1876, when I was sledding wood on the Kell tract, I had Leo Lantz helping me, and he and I made out one day to go a fishing; we had caught some small bait-fish, and on the way going to the river we went by this here Kissinger's spring; we stopped at the spring to give the little fish some fresh water, and I noticed the spring was freshly walled up and a tin screen in the bottom of the spring. I

said to Lantz, "There is a new arrangement here;" he said that that was the pipe that they had laid down to a ram to force water up to the house; I saw a line of fresh ground where the pipes had been covered with—or at least were said; that is all that I saw.

Q. 3. About what time in the year 1876 was this, if you remember?

A. As near as I can tell you, it was between the first and the 15th of the month of October, 1876.

Q. 4. For whom were you doing the work of sledding the wood on the Kell tract?

A. For Mr. Seidel, or the firm of Seidel Bros.

Q. 5. By whom was Mr. Lantz employed—by you or by Seidel Bros.?

A. By me.

Q. 6. How long was he in your employ?

A. In the neighborhood of three months.

Q. 7. On what tract did he work for you while you employed him?

A. On the Kell tract.

Q. 8. What work did he do on the Kell tract for you while you employed him?

A. Sledded wood.

Q. 9. What kind of wood and what was it used for?

A. Cord wood; it was used for charcoal.

Q. 10. Where did you and Mr. Lantz start from that day when you started to go a fishing?

A. I started from home. I met Mr. Lantz at Bollinger's stable, as we call it.

Q. 11. I believe you afterwards sledded out some rails from the Kell tract at one time, did you not?

A. Yes, sir.

Q. 12. Do you remember when that was?

A. It was in the spring of 1877.

Q. 13. Did Mr. Lantz help you sled out those rails?

A. No, sir.

Q. 14. Referring to the time when you were sledding out cord wood on the Kell tract for Seidel Bros., are you able to state the time when that job was finished?

A. On the 26th day of November, 1876.

Q. 15. Did Lantz ever work for you after the 26th day of November, 1876, or not?

A. Yes, sir.

Q. 16. When and at what?

A. In 1879, at sledding wood.

Q. 17. On what tract?

A. On the Grubb tract.

[*Deposition objected to as not evidence, and cross-examination declined by Mr. Howson.*]

Examination taken, reduced to writing, and by the witness affirmed and subscribed to before me, this 1st day of Febuary, 1884.

FRED. M. OTT,
Examiner.

JOHN H. RHOADS.

Recess until two o'clock, P. M.

EDWARD CRIST, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

My age is twenty-six; I reside at Marysville, Perry county, Pa.; I am working on the Pennsylvania railroad.

Q. 1. How long have you resided at Marysville?

A. My parents moved there in December, 1870; I have claimed that as my home ever since.

Q. 2. Mr. Theo. Fenn, a witness who has recently been examined in this case, testified (see p. 779, defts'. printed sur-rebutting record) that a man named Edward Crist worked for him during the period from May 20, 1876, until March 20, 1877; are you that Edward Crist?

A. I am.

Q. 3. What kind of work did you do for Mr. Fenn during that time?

A. I went there to tend the cattle; that is, as a dairyman.

Q. 4. After you got through work for Mr. Fenn, on March 20, 1877 what work did you then do?

A. I just worked round at little jobs of work.

Q. 5. How long did you work around at little jobs of work before you went into somebody's employ for more continuous service?

A. I worked from March until May.

Q. 6. Whose service did you go into then?

A. I went into Mr. Daniel Boas's.

Q. 7. Where?

A. At Fort Hunter farm, right above Rockville, in Dauphin county.

Q. 8. How long did you work for Mr. Boas on that farm?

A. I worked for Mr. Boas from May until after harvest.

Q. 9. After you got through working for Mr. Boas, did you return to Marysville again or not?

A. Yes, sir.

Q. 10. What did you then do?

A. I worked around at little jobs of work around the town.

Q. 11. How long did you continue to work at little jobs of work before you entered upon regular service again for somebody?

A. I worked around that way then until in May, 1878, before I went into service for anybody.

Q. 12. Whose service did you go into then?

A. I went to Andrew Francis Hart, in Kansas.

Q. 13. How long did you stay there?

A. I stayed there until about the 15th or 16th of June.

Q. 14. Where did you go, and what did you do then?

A. I came east to Marysville.

Q. 15. And how long did you stay at Marysville.

A. Till the 18th of July, 1878.

Q. 16. Where did you go then?

A. I went to John Bullock, Brooklyn, New York.

Q. 17. How long did you stay with him?

A. I stayed with him till in September, 1878.

Q. 18. Where did you go after you got through working for Mr. Bullock in September, 1878?

A. I came to Marysville again.

Q. 19. How long did you stay at Marysville?

A. I stay there yet; I have never been away since.

Q. 20. When did you commence railroading, or working in the employ of the railroad company?

A. I commenced working for the railroad company in 1878.

Q. 21. What were you doing from the time when you finished working for Mr. Bullock, in September, 1878, until the time when you commenced working for the railroad company?

A. I was working around town there at little jobs.

Q. 22. Can you name any job that you did in that time?

A. I can; I worked for O. H. Miller, for Henry Gamber; I worked

some for George Kissinger in 1878; I guess that is about all that I worked for.

Q. 23. What work did you do with Henry Gamber in that time?

A. I helped him to dig a well.

Q. 24. Whose well, and where?

A. Mr. Schools', in Marysville.

Q. 25. You have spoken of George Kissinger, did you mean George W. Kissinger who lived on the Draper farm, just back of Marysville?

A. Yes, sir.

Q. 26. When did you first know Mr. Kissinger?

A. I first got acquainted with Mr. Kissinger when he kept store in Marysville.

Q. 27. When did you first do any work for Mr. Kissinger on the Draper farm?

A. The first work was in 1875.

Q. 28. While Mr. Kissinger lived on the Draper farm, did you ever know of his having a hydraulic ram there to force water from the spring to the house?

A. I did.

Q. 29. When did you first know about that ram being there?

A. In December, 1876, I first knew of that ram.

Q. 30. How came you to know about it at that time?

A. I was sent there to get a breed-sow served, and that is the way I came to know it.

Q. 31. Who sent you there to get the sow served?

A. Theo. Fenn.

Q. 42. Was it Fenn's sow, and were you working for him at the time or not?

A. It was, and I was working for him.

Q. 33. When you went to Mr. Kissinger's on that errand, did you get the sow served there; if not, why not?

A. No, sir; I didn't; the boar had been altered.

Q. 34. Did you get the sow served anywhere; if so, where?

A. At Daniel Sanders.

Q. 35. When the sow had her litter of pigs from that service, was Mr. Theo. Fenn still running the farm, or had he given it up?

A. He had given it up.

Q. 36. And into whose hands had the sow come when she had her litter?

A. Into W. K. Fenn's.

Q. 37. You state that your first knowledge of Mr. Kissinger's hydraulic ram was obtained at the time when you went to Mr. Kissinger's to see about getting that sow served, in the latter part of 1876; what knowledge did you get of the hydraulic ram at that time?

A. The only knowledge I got was that I seen it running there in a barrel; that is, the water out of it.

Q. 38. Describe what you saw there at that time, and where it was?

A. It was back of the house flowing into a barrel; it was flowing from an iron spout; it was a stream about as big as my little finger.

Q. 39. Did you ever do any work for Mr. Kissinger after that time? If so, when did you first do any work for him after that time?

A. In May, 1877.

Q. 40. What did you do for him in May, 1877?

A. I helped to plant corn.

Q. 41. How much work for him did you do in May, 1877?

A. Four or five days' work.

Q. 42. Did you have occasion to be around the house pretty frequently during that time while you were working there or not?

A. No, sir; only at meals.

Q. 43. Did you see anything more of the ram at that time or not?

A. No, sir.

Q. 44. Did you see what you had seen before?

A. Yes, sir.

Q. 45. While you were working there planting corn, where did you get water for drinking purposes and washing your hands, and so forth?

A. Out of the barrel.

Q. 46. The barrel, where—what barrel?

A. The barrel where the ram flowed the water in.

Q. 47. Was the ram still working at that time?

A. It was.

Q. 48. In how many years did you ever help Mr. Kissinger plant corn, or work for him planting corn?

A. Never but one.

Q. 49. Where were you and what were you doing in the corn planting season of 1879?

A. Working on the railroad.

Q. 50. Tell us whether you ever did, or did not, do any work at planting corn after you commenced working on the railroad?

A. I didn't.

Q. 51. Did you ever help Mr. Kissinger gather peaches at any time?

A. I did.

Q. 52. When was that?

A. In the fall of 1877.

Q. 53. How long did you work for him gathering peaches that fall?

A. As near as I can tell, about two weeks.

Q. 54. Did you see anything of the ram at that time, or not?

A. I did.

Q. 55. What about it at that time?

A. That time it wasn't flowing.

Cross-examined by Mr. Storrow:

Cross-Q. 56. Tell me everything else you know about that ram, or connected with it.

A. I know that either in March or February, 1876, George Kissinger was talking about getting a pump, or something to force the water from the spring to the house; I heard him express himself about that and that is all I seen or heard of the ram until I seen it in; that is all I know about it.

Cross-Q. 57. What work did you do for George Kissinger in the spring of 1877?

A. I planted corn.

Cross-Q. 58. What other work did you do for him in 1877?

A. I helped him to pick peaches.

Cross-Q. 59. Anything else in 1877?

A. No, sir; not that I know of.

Cross-Q. 60. What part of the farm did you plant corn on in the spring of 1877?

A. The field on the Marysville side of the house along the road.

Cross-Q. 61. What other part of the farm was planted in corn that year, according to your recollection?

A. None that I know of.

Cross-Q. 62. How far back did that field go; did it cross the stream?

A. No, sir; it didn't.

Cross-Q. 63. Did you manure the field the time you planted it or put any dressing on it?

A. We put bone-dust on it.

Cross-Q. 64. When did you go to work for the railroad?

A. I went to work for the railroad in 1878.

Cross-Q. 65. For the Pennsylvania railroad was it?

A. Yes, sir.

Cross-Q. 66. What did you do first?

A. Worked on the floating gang.

Cross-Q. 67. How long did you work on the floating gang?

A. I worked about a month.

Cross-Q. 68. What did you do next?

A. I went and helped to cut ice for Seidel Bros.

Cross-Q. 69. How long did you work for them, and what did you do next?

A. I worked for them about two weeks; I next worked at job work around in the town there.

Cross-Q. 70. When did you next get any regular work, and for whom?

A. The next work I done was for the Pennsylvania Railroad Company in the spring of 1879.

Cross-Q. 71. How long did you stay with the railroad company that time?

A. I stayed up to this day; I am in their employ yet.

Cross-Q. 72. What did you do when you went to work for them in the spring of 1879?

A. I was on the floating gang.

Cross-Q. 73. What work did you do for Mr. Kissinger in 1878?

A. I didn't do no work for Kissinger in 1878.

Cross-Q. 74. In your 22d answer, you testified that you did work for Mr. Kissinger in 1878 after you quit working for Mr. Bullock and before you began working for the railroad. Isn't that true?

A. Yes, sir; that is correct; I can tell the very thing I done.

Cross-Q. 75. What did you do then?

A. In the first place, in 1878, after I quit Miller—I worked first for Miller—after his work was done, I went to Kissinger. We hauled some lime from the railroad—that is what we done first. Then the rest was hauling manure and other little jobs on the place there. I remember that I had Miller's horse to help to haul lime.

Cross-Q 76. What part of the farm did you haul the lime to?

A. Some on the right hand side of the road going from Marysville up near Reiff's woods.

Cross-Q. 77. Where did the lime come from?

[*Objected to as calling for hearsay.*]

A. I don't know that.

Cross-Q. 78. What railroad did you haul it from?

A. We hauled it from the N. C.

Cross-Q. 79. How many car-loads?

A. I helped to haul one.

Cross-Q. 80. How long did it take you?

A. It just took us a day.

Cross-Q. 81. Who worked with you?

A. One of the boys, but I couldn't tell you which one.

Cross-Q. 82. Who were with you hauling manure and the other work you did at that time?

A. Frank and I.

Cross-Q. 83. Was that before or after you worked for Gamber, if you recollect?

A. It was before, I think.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 1st day of February, 1884.

FRED. M. OTT,
Examiner.

EDWARD CRIST.

Adjourned until February 2, 1884, at ten o'clock, A. M.

February 2, 1884, 10, A. M.

Examination resumed.

Present, Mr. Storrow for complainants, and Mr. Hill for respondents.

EDWARD L. GAULT, *being produced, sworn, and examined saith:*

Examined by Mr. Hill:

My age is twenty-one; I reside in Marysville, Perry county, Pennsylvania; I am a clerk in the dry goods store of S. S. Leiby.

Q. 1. What was your last occupation before you became a clerk in a dry goods store?

A. I was on a survey for the South Pennsylvania railroad.

Q. 2. And what had been your occupation before that?

A. Farming had been my entire occupation before that.

Q. 3. What is your father's name, and where does he live?

A. His name is Edward C. Gault, and he lives at Marysville.

Q. 4. How long has he lived at Marysville?

A. Since last April.

Q. 5. Where did he live before that?

A. He lived on a farm about three miles west of Marysville, in Rye township.

Q. 6. Up to what time did you live on the farm with him?

A. 1881.

Q. 7. Do I understand you that, from your childhood up to 1881, you lived with your father on the farm in Rye township?

A. Yes, sir.

Q. 8. Did you know of George W. Kissinger living on the Thomas Draper farm, just back of Marysville—between your father's farm and the village of Marysville?

A. Yes, sir.

Q. 9. Mr. Kissinger at one time had a hydraulic ram put in on the Draper farm for the purpose of forcing the water from the spring up to the dwelling-house; did you ever see that ram there?

A. Yes, sir; I did.

Q. 10. How many times did you ever see it there?

A. I only saw it there once while it was in operation.

Q. 11. In what year was it that you saw it there that once?

A. In 1876.

Q. 12. Was it in warm or cold weather that you saw it there?

A. It was in warm weather.

Q. 13. How happened you to be there at that time and see the ram?

A. On a search for some cattle that had broken out of the field and got away.

Q. 14. Describe where you went in your search for the cattle.

A. Along the south side of the Cove mountain towards Marysville.

Q. 15. And following that line you came to the Draper farm, if I understand you?

A. Yes, sir.

Q. 16. On what part of the Draper farm were you during that search for the cattle?

A. I went parallel down from the mountain to the barn, to where the ram was.

Q. 17. After you had been down to where the ram was, did you continue on towards Marysville, or return home to your father's?

A. I returned home.

Q. 18. In returning home from where the ram was, did you go up by Kissinger's house or cut across lots?

A. I cut across lots.

Q. 19. While you were on the Draper farm that day, were you at Kissinger's house?

A. No, sir.

Q. 20. Did you see any of the Kissinger family there on the farm that day?

A. No, sir.

Q. 21. Did you see and talk with anybody on the Kissinger farm that day?

A. Yes, sir.

Q. 22. Who was it that you saw and talked with there?

A. I can't tell who it was.

Q. 23. Can you describe the person, or tell how old he was?

A. He was a middling old man, not very tall.

Q. 24. Was he doing anything; if so, what?

A. He was working at the ram.

Q. 25. What was he doing to the ram?

A. Unscrewing and taking off the cap; by cap I mean the top where the pipe is connected to the ram.

Q. 26. How long did you stay there with him?

A. About a half an hour.

Q. 27. Did you do anything while you were there?

A. Yes, sir.

Q. 28. What?

A. Held a wrench for him.

Q. 29. Describe how you held the wrench for him, and what he was doing while you held the wrench.

A. I held the wrench to keep the pipe from turning; he was unscrewing it.

Q. 30. Did you understand, at the time, why he was taking off the top of the ram?

A. Yes, sir.

Q. 31. What did you understand at the time to be the reason for his doing that work?

A. It was full of dirt.

Q. 32. What did he do after he took the top off, if anything?

A. Took the dirt out.

Q. 33. Did you stay there till he put the ram together again?

A. Yes, sir.

Q. 34. After he put it together again, did the ram work or not?

A. Yes, sir; it did.

Q. 35. How did you know that it was working after he got it together again?

A. I could hear it.

Q. 36. Did he say anything about the ram or its condition while you were there; if so, what?

A. He said the ram should not have been out of repair in such a short time.

Q. 37. From his conversation about the ram, did you gather that he was the man who had furnished the ram to Mr. Kissinger or not?

[*Objected to as calling for the merest guess-work.*]

A. I could not positively say.

Q. 38. Do you remember what your understanding or opinion was at the time upon that subject?

[*Same objection.*]

A. No, sir.

Q. 39. At the time when he and you were there fixing the ram, did you observe the condition of the ground between the ram and the house; if so, what was its condition?

A. It had been dug up at several places.

Q. 40. And had the dirt been filled in again, or was it still open?

A. It was still open at one place.

Q. 41. How near the ram was that place?

A. I would have supposed it to be a hundred feet from the ram, or near about that.

Q. 42. How long was the place where it was dug up and still open?

A. About three feet.

Q. 43. Did you look into it?

A. Yes, sir.

Q. 44. Describe what you saw in it, if anything.

A. I saw an old pipe laying in there.

Q. 45. While you were talking that day with the man who fixed the ram, was anything said about the pipes—about their condition or their age; if so, what?

A. He said it was an old pipe, and had leaked where they had dug up that ground.

Q. 46. If I understand your previous testimony correctly, that was the first and last time that you ever saw the ram on the Draper farm; am I correct?

A. In operation, I think I had it.

Q. 47. Did you ever see it when it was not in operation; if so, was it before or after the time when you saw the man fixing it?

A. It was after the time.

Q. 48. How many times did you see it when it was not in operation?

A. Three times to my recollection.

Q. 49. Who was living on the farm when you saw the ram not in operation?

A. George Scholl.

Q. 50. That was after Mr. Kissinger left the farm, was it?

A. Yes, sir.

Q. 51. Then, if I understand you correctly, the time when you saw the man fixing the ram was the last time you ever saw the ram while Mr. Kissinger lived on the place; am I right?

A. Yes, sir.

Cross-examined by Mr. Storrow:

Cross-Q. 52. What kind of a wrench was it you held to help the man with?

A. It was a single wrench.

Cross-Q. 53. What do you mean by that?

A. I mean by that one for one-sized nut.

Cross-Q. 54. Just a common wrench made out of a bar of iron, do you mean?

A. Yes, sir.

Cross-Q. 55. Where did you stand when you held that wrench?

A. On the opposite side of the ram from the man who was fixing it.

Cross-Q. 56. Did you do the unscrewing, or did he do the unscrewing?

A. He done the unscrewing.

Cross-Q. 57. What did he do it with?

A. He done it with a monkey wrench.

Cross-Q. 58. What was it you held with your wrench?

A. I held the pipe from turning.

Cross-Q. 59. Where was this pipe that you held from turning?

A. It was the adjoining pipe to the ram.

Cross-Q. 60. One of the pipes that the water run through, do you mean?

A. Yes, sir.

Cross-Q. 61. How big a pipe?

A. I cannot say.

Cross-Q. 62. As big as your finger, or as big as your wrist?

A. I would suppose it to be between that.

Cross-Q. 63. Was it the biggest or the smallest pipe connected with the ram?

A. It was the largest.

Cross-Q. 64. Where was the ram placed—on the surface of the ground, or how?

A. It was placed in a hole.

Cross-Q. 65. Did both you and he get into the hole?

A. No, sir.

Cross-Q. 66. How near the hole were you?

A. I was right at the side of the hole, and he was in it.

Cross-Q. 67. Did you reach down and hold the wrench?

A. Yes, sir.

Cross-Q. 68. How did he take the dirt out of the pipe?

[*Objected to as assuming that he took the dirt out of the pipe.*]

A. By means of a rod or stick that he used.

Cross-Q. 69. What sort of a thing was this cap that he took off?

A. I cannot describe its appearance.

Cross-Q. 70. About how big a thing was it?

A. I cannot say.

Cross-Q. 71. Did he take it off entirely away, or just unscrew it?

A. He took it entirely off.

Cross-Q. 72. Was it screwed into the pipe or into the ram?

A. To the pipe.

Cross-Q. 73. Did he leave it hanging on to the pipe and move it to one side, or did he take it entirely off by itself?

A. He took it entirely off by itself.

Cross-Q. 74. Did you see anybody else on the farm that day?

A. Yes, sir.

Cross-Q. 75. Whom?

A. I cannot say.

Cross-Q. 76. Was anybody else working at the ram?

A. No, sir.

Re-direct by Mr. Hill:

Q. Q. 77. You say you saw somebody else on the farm; were you near enough to speak to them or know who they were?

A. No, sir.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 23 day of Febuary, 1884.

FRED. M. OTT,
Examiner.

EDWARD L. GAULT.

Adjourned until Monday, February 4, 1884, at ten o'clock, A. M.

Monday, February 4, 1884.

Examination resumed pursuant to adjournment.

Present, Mr. Storrow and Mr. Howson for complainants, and Mr. Jacobs for respondents.

STILES L. FESLER, *being produced, affirmed, and examined, saith:*

Examined by Mr. Jacobs:

My age is twenty-five; I reside at Marysville, Perry county, Pa.; I am a butcher.

Q. 1. When did you begin butchering on your own account?

A. I must look at my book to tell you that.

[*Witness refers to pocket account-book.*]

About the middle of August in 1876.

Q. 2. Did you begin in a large or in a small way?

A. In a very small way. I quit then, and began again.

Q. 3. How long did you continue butchering in a small way, and what kind of cattle did you kill while so butchering?

A. Between five and six months. I killed mostly all calves and sheep—the majority sheep.

Q. 4. Where did you pasture your sheep during that time?

A. On the Draper farm where Kissinger lived.

Q. 5. Did you ever pasture any sheep there at any time after the first five or six months that you were butchering?

A. No, sir.

Q. 6. Did you or not sell any meat to George Kissinger at the time you were pasturing sheep upon the place he occupied? If so, will you produce any book entries which you may have showing such sales?

A. Yes, sir.

[*Witness produces book containing the following entries:*]

"Marysville, Aug.
1876,
* * * * * * *
September (*at top of next page*).
* * * * * * * *
23 G Kissinger 1,15
* * * * * * *
[*Under heading of September*, 1876, *on another page.*]
28 G Kissinger .65
[*On another page, under date of October*, 1876, *the following*:
"20 G Kissinger 40
* * * * * * * *
21 G. Kissinger, meat 55."]

Q. 7. Will you tell us how you used the book which you have produced, and when the several entries which the examiner has copied upon the record were made?

A. I had it in my pocket. The entries were made at the time he got the meat. Whenever it was weighed, if it wasn't paid for, I just charged it.

Q. 8. Whilst you were keeping sheep upon the Draper place, did any of them at any time break out of the field in which you had them inclosed?

A. Yes, sir.

Q. 9. Who put them back?

A. I did.

Q. 10. Did you see any person on the Draper farm at that time?

A. Yes, sir; Mr. George Kissinger—the old gentleman.

Q. 11. Where was he and what was he doing when you saw him?

A. Working below the house, at the ram. He told me he was trying to fix the ram.

Q. 12. What kind of work was he doing?

A. Digging there with a shovel. I supposed he was fixing at the turn of the ram—or the bend, rather.

Q. 13. Will you describe what you mean by the turn or the bend?

A. I would suppose, where the turn in the pipes was made, to run the pipes up the hill. It came down from the spring to where the turn was.

Q. 14. What did you see that led you to believe that pipes were laid from the spring to what you call the turn or bend, and thence up the hill?

A. I seen the pipe there.

Q. 15. Will you tell us what part of the pipe you saw, and how you came to see it?

A I rather think it was wood pipe that he had uncovered.

Q. 16. Will you tell us, as nearly as you can, all that Mr. Kissinger said to you about the ram at that time?

A. When I first came there I asked him what he was doing. He said he was trying to fix the ram that was intended to force the water up to the house. He said that it didn't do as it was intended to do. He said that he thought the pipes leaked—that they weren't joined right, or else the water didn't have force enough; he didn't know what the trouble was. I left then, went over to the spring, got a drink, noticed the pipe in the spring, went back and told him I couldn't understand that—how they could get the water up to the house. He pointed up, and told me it was to empty into a half-barrel that I could see standing up fornent a little dry-house; and if it would work right it would save the women lots of trouble. That is about all I remember speaking to him about it.

A. 17. Your recollection of this interview seems to be very distinct. Can you tell us how Mr. Kissinger was dressed at the time it took place?

[*The comments of respondents' counsel upon the value of the testimony are objected to as improper and incorrect.*]

A. I am pretty positive he was in his shirt-sleeves, without a vest on.

Q. 18. In what direction from the place where Mr. Kissinger was working was the field in which you were accustomed to keep your sheep?

A. A kind of south.

Q. 19. From the place where he was working, was the field where

you kept sheep towards Marysville or away from it, or toward the mountain or away from it? Please describe the location of the sheep pasture and the place where Mr. Kissinger was working, as nearly as you can.

A. It was the field next to the town, adjoining the houses. It was the second field below where Mr. Kissinger was working that the sheep were in—adjoining the town. It was along the run.

Q. 20. With whom did you learn your trade as butcher?

A. J. M. Bruner.

Q. 21. Did you continue to work for him up to the time he quit butchering in Marysville?

A. Within five or six months.

Cross-examined by Mr. Storrow:

Cross-Q. 22. What is your business now?

A. Butchering.

Cross-Q. 23. Are you carrying it on for yourself?

A. Yes, sir.

Cross-Q. 24. How long have you been carrying it on for yourself?

A. At the two different times, about four years and a half.

Cross-Q. 25. How much of an interval was there between these two different times?

A. Fourteen months.

Cross-Q. 26. When was that interval?

A. Part of 1877 and 1878.

Cross-Q. 27. Will you tell me everything else that you remember seeing at George Kissinger's place at the time of yonr alleged visit?

A. I could tell you quite a lot of articles. I always noticed his cattle. I remember of seeing his cattle and his horse stock when I walked by the barn. That is about all I noticed. I remember at that time he had a gray horse and a bay with a bald face.

Cross-Q. 28. Did you see anybody else there that day?

A. I did not notice any other person.

Re-direct by Mr. Jacobs:

Q. Q. 29. Were you near the house at that time?

A. The nearest I was, was, I suppose, about two hundred and twenty-five feet. I went up the run—followed the run from the town up.

Re-cross by Mr. Storrow:

Re-cross-Q. 30. What led you to go up from the town?

A. I went to see if the sheep that I had there on pasture was in the field or had broken out.

Examination taken, reduced to writing, and by the witness affirmed and subscribed to before me, this 4th day of February, 1884.

FRED. M. OTT,
Examiner.

S. L. FESLER.

Recess from 11, A. M., to 2, P. M., for want of witnesses.

Mrs. MARGARET SWIGERT, *being produced, sworn, and examined, saith:*

Examined by Mr. Jacobs:

I am the wife of Christopher Swigert, of Tyrone, Blair county, Pa.

Q. 1. Are you related to Cyrus Bowman, of Mongul, Franklin county, Pa., whose occupation is that of miller, and who formerly resided at Eberly's Mills, Cumberland county, Pa.?

A. Yes, sir; I am a sister of his wife.

Q. 2. Did you ever visit Mr. Bowman's family whilst they resided at Eberly's Mills?

A. Yes, sir.

Q. 3. How often?

A. At least twice; or one year I was there three times.

Q. 4. Did you ever hear that Daniel Drawbaugh had a talking-machine at his shop at Eberly's Mills?

[*Objected to as leading and calling for hearsay.*]

A. Yes, sir.

Q. 5. Whom did you hear speak of it, and what did you hear said about it?

[*Objected to as calling for hearsay.*]

A. I heard my sister and brother-in-law, Mr. Cyrus Bowman, and his wife and their children speak of it. They said it was a talking-machine—called it a talking-machine.

Q. 6. Which of his children did you hear speak of it?

A. His two oldest children, who are dead now; they were very much excited over it; they were both girls.

Q. 7. Will you tell us, as nearly as you can remember, what the two girls said about it?

[*Objected to as already answered once and the witness' memory already exhausted, and also objected to as inquiring for hearsay.*]

A. As far I can remember, they said you could talk through it from one house to another—I don't just know how, but some way by electricity.

Q. 8. Did they or not want you to go to see it?

[*Objected to as leading and otherwise incompetent.*]

A. Yes, sir.

Q. 9. When did they die?

[*Objected to as not seeking the best evidence.*]

A. As far as I can remember it was in the Christmas of 1875.

Q. 10. Was it or was it not whilst Mr. Bowman still lived at Eberly's Mills?

[*Objected to as above.*]

A. It was whilst Mr. Bowman lived at Eberly's Mills.

Q. 11. Were you, or were you not, present in his house during their last illness and until their deaths?

A. Yes, sir.

Q. 12. How long apart did they die?

A. One died in the fore part of the day, and the other in the latter part of the next night. On Christmas day they were both lying corpses.

Q. 13. They had been invalids some time before they died, had they not?

A. Yes, sir.

Q. 14. How old were they when they died?

A. As far as I can remember, eighteen and sixteen, I think.

Q. 16. How is it that they came to speak to you of Daniel Drawbaugh's talking-machine and mentioned electricity in connection with it?

[*Objected to as incompetent.*]

A. Their pa got a battery and I had used it on the children, and that was the way they got to speaking about it, as far as I can remember.

Q. 16. What did you hear Mr. Cyrus Bowman say about Mr. Drawbaugh's talking-machine?

[*Objected to as calling for hearsay.*]

A. That there was such a thing; he said that Mr. Drawbaugh had a talking-machine.

Q. 17. Do you remember of his saying anything about the manner in which, or the means by which, Mr. Drawbaugh's talking-machine was operated?

[*Objected to for the same reasons, and as leading.*]

A. No, sir; I don't remember.

Q. 18. Did you or not hear any persons who were not members of Mr. Bowman's family speak of Mr. Drawbaugh's talking-machine when you were visiting Mr. Bowman's house at Eberly's Mills?

[*Objected to as leading, and as not rebuttal.*]

A. I did; but I don't remember their names.

Q. 19. Were you acquainted with Mr. Frank D. Hackett, who worked for Mr. Bowman at Eberly's Mills?

A. Yes, sir.

Q. 20. Do you know when he went to work for Mr. Bowman there?

A. The first of April, 1874.

Q. 21. Were you along with the flitting when Mr. Bowman moved to Eberly's Mills?

A. Yes, sir.

Q. 22. Do you remember whether or not Mr. Hackett also was along?

[*Objected to as immaterial, irrelevant, and wasting time.*]

A. I don't remember whether he was; I wouldn't like to say positively, for it has been a good while; but it seems to me he went with him when he moved.

Cross-examined by Mr. Howson:

Cross-Q. 23. Where were you living when you used to visit Mr. Cyrus Bowman's family at Eberly's Mills?

A. At Newville, Cumberland county.

Cross-Q. 24. When did you move away from Newville?

A. A year ago last May.

Cross-Q. 25. Are you personally acquainted with H. F. Drawbaugh, a brother of Daniel Drawbaugh, and living at Newville; and if yes, how long have you been acquainted with that Mr. Drawbaugh?

A. I knew it was him, of course; I knew Mr. Drawbaugh, I suppose, fourteen or fifteen years; I knew it was him, but wasn't personally acquainted with him; he has been living there all his life, I guess—him and his family.

Cross-Q. 26. When and from whom did you first hear that this suit about the talking-machine was going on?

A. Mr. Henry F. Drawbaugh came to my house last Wednesday week, I think; I was at lecture, and when I came home he was there.

Cross-Q. 27. When did you last visit Mr. Bowman's family?

A. In September last.

Cross-Q. 28. Have you any friends or acquaintances now living at or in the neighborhood of Eberly's Mills?

A. No, sir.

Cross-Q. 29. How long was Mr. H. F. Drawbaugh at your house at the time you say he came to visit you?

A. But a very short time.

Cross-Q. 30. Have you seen him since that time; and if yes, when and where?

A. No, sir; I didn't see him since.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 4th day of February, 1884.

FRED. M. OTT,
Examiner.

MRS. MARGARET SWIGERT.

HENRY SHAFFER, *being produced, sworn, and examined saith:*

Examined by Mr. Hill:

My age is sixty-one; I reside at Marysville, Perry county, Pa.; occupation, car inspector for the Northern Central and Pennsylvania railroads.

A. 1. How long have you been car inspector at Marysville for said railroads?

A. Since 1860.

Q. 2. George W. Kissinger lived on Thomas Draper's farm, just back of the village of Marysville, from about the 1st of April, 1874, to about the 1st of April, 1880. Were you acquainted with him while he lived there?

A. Yes, sir.

Q. 3. State whether or not Mr. Kissinger while he lived there ever came to you to borrow any tool or implement from you.

A. Yes, sir.

Q. 4. What tool or implement?

A. A pair of tongs where I used to use for attaching air-pipes to cars coming off of the Baltimore division and going over the Pennsylvania railroad. I mean the air-pipes to the air-brakes, and those cars going over the Pennsylvania railroad west.

Q. 5. Did you lend Mr. Kissinger the tongs?

A. Yes, sir.

Q. 6. When was that?

A. It was in 1877, in about harvest time.

Q. 7. How near was it to the great railroad strike about the 1st of July 1, 1877?

A. It was about that time, as near as I can tell.

Q. 8. How long did Mr. Kissinger keep the tongs?

A. He didn't keep them over about a half a day.

Q. 9. Did you have any conversation with him when he got the tongs, or when he brought them back, in regard to the use he was going to make of them?

A. No, sir; I didn't; I didn't see him when he fetched them home.

Q. 10. How soon did you see him after you lent him the tongs?

A. I couldn't tell; it might have been a week or ten days afterwards.

Q. 11. When you saw him, perhaps a week or ten days after you got the tongs, what, if any, conversation did you have with him?

A. All I asked him was whether the tongs answered the purpose, and he said they did.

Q. 12. Did you have any conversation with him at any time as to what purpose he got the tongs for; if so, what was said about it?

A. I had at the time that he asked me for the tongs; I asked him what he wanted with them; he wanted to unscrew some pipe that was connected to his ram, he called it—I don't know whether it was a proper name for it or not—that it was rusted so tight that he couldn't get it open—couldn't unscrew it.

Q. 13. Did he say why he wanted to get it open or unscrew it at that time?

A. He didn't say anything more than that he wanted them to unconnect them.

Q. 14. In my 9th question I asked you if you had a conversation with him when he got the tongs, or when he brought them back, in regard to the use he was going to make of them, to which you replied: "No, sir; I didn't; I didn't see him when he fetched them home." I

understand you now to testify that this conversation which you have just narrated took place when he got the tongs; am I right?

[*Objected to as leading and argumentative.*]

A. Yes, sir.

Q. 15. Will you explain why you answered my last question as you did?

A. The reason why I asked him the question, he said he wanted to unconnect some pipe connected with his ram, and I told him he should bring them home as soon as he could, that I needed them.

Q. 16. You evidently do not understand my question; in your 9th answer you testified that you had no conversation with him when he got the tongs; you now testify that you had a conversation with him when he got the tongs, in which he told you that he wanted to unscrew the pipes of his ram with them; what I want to know now is this: whether you misunderstood my ninth question, or whether when you answered it as you did you had forgotten about the conversation and afterwards remembered it when you came to answer the twelfth question.

[*Objetced to as leading and argumentative.*]

A. I misunderstood the question when you asked me in the first place.

Q. 17. You have stated that Mr. Kissinger borrowed the tongs from you about the time of the great railroad riot and strike in 1877; before that time had you or had you not heard of Mr. Kissinger's having a hydraulic ram at his place on the Draper farm to force the water up to his house?

A. I had not, sir.

Q. 18. Your business, I suppose, kept you employed around the railroad station most of the time, did it not?

[*Objected to as leading.*]

A. Yes, sir; and through the yard, from one end of the yard to the other.

Q. 19. Did you ever at any time see Mr. Kissinger or any of his family haul anything away from the railroad station?

A. I did.

Q. 20. What did you see them haul away?

A. I saw them loading some pipe at Marysville station the summer of 1878, but cannot tell you whether it was in the fore part of the

summer or the after part; it was Mr. Kissinger's team, but I couldn't tell whether it was Mr. Kissinger or his hired man, or his son-in-law, rather—Zimmerman—I couldn't tell any more which of them it was.

Q. 21. Do you remember whether it was a one-horse or a two-horse team?

A. A two-horse team.

Q. 22. Did you notice the size of the pipe that were taken away by that team?

A. I did. I judge that they were about from seven eighths to one inch, as near as I can tell.

Q. 23. When you saw Mr. Kissinger's team hauling those pipes away from the station, about how long was that after he borrowed the tongs from you?

A. I should judge it was about nine months, as near as I can tell.

Cross-examined by Mr. Storrow:

Cross-Q. 24. Have you got those tongs now?

A. Yes, sir; I have them at home—at the place where I live.

Cross-Q. 25. Have you had them in use ever since?

A. Yes, sir; we had them in use ever since, but not for that purpose—we haven't for several years. We don't put them pipes on any more. It is about two years, I guess, since we quit using them. We use the tongs now for holding a cold chisel to cut the brasses out of the cars.

Cross-Q. 26. Did Oliver Miller summon you to come down here?

A. Yes, sir.

Cross-Q. 27. When?

A. On Saturday.

Cross-Q. 28. Do you mean that it was about two years ago that you quit using these tongs on the car pipes?

A. Yes, sir; as near as I can tell.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 4th day of February, 1884.

FRED. M. OTT,
Examiner.

HENRY SHAFFER.

Adjourned for want of witnesses until February 5, 1884, at ten o'clock, A. M.

February 5, 1884, 10, A. M.

Examination resumed.

Present, same counsel.

ABRAHAM DITLOW, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

Q. 1. Are you the same Abraham Ditlow who was examined as a witness for complainants in this case on the 30th day of December, 1882, and whose testimony is printed in complainants' printed record, pages 967 to 974 inclusive?

A. Yes, sir.

Q. 2. It has appeared in evidence in this case that in September, 1874, your brother, Joseph Ditlow, who was then working for Harmon Hardesty at or near Wheeler, Indiana, had a trapping-kit shipped out by railroad from Pennsylvania to him at Wheeler, Indiana. Do you remember that circumstance?

A. Yes, sir.

Q. 3. Prior to that time, had you and your brother Joseph been in the habit of trapping together in the winter?

A. Yes, sir.

Q. 4. Who owned that trapping-kit that was shipped out to your brother in Indiana in September, 1874?

A. My brother and me, all except the stove; he owned that himself.

Q. 5. It has also appeared in evidence that that kit was afterwards returned from Indiana to Pennsylvania. Do you know when it was returned to Pennsylvania?

A. In the fall of 1875.

Q. 6. Do you know whether anything was done with it—if so, what—in the winter of 1875–6?

A. It was used for trapping.

Q. 7. Where and by whom?

A. In the winter of 1875. We used it on the Conodoguinet creek. By "we" I mean Joseph Ditlow, David Ditlow, and Abraham Ditlow.

Q. 8. Do you know whether anything was done with that kit the next winter,—the winter of 1876–7,—if so, what?

A. Yes, sir; we went trapping in Perry county—Joseph Ditlow, and myself, and David Ditlow and Hiram Drawbaugh.

Q. 9. What then became of the kit?

A. It was shipped to Indiana.

Q. 10. Has it remained there ever since, or has it been returned to Pennsylvania?

A. It didn't remain there, but it never was shipped to Pennsylvania.

Q. 11. In your testimony for the complainants last winter at Philadelphia (see pp. 968, 969, complts. printed record) you stated in substance that you first heard of Daniel Drawbaugh's talking-machine in the spring of 1877, in the store at Milltown, from something George Drawbaugh said; over a year has passed since you gave that testimony, during which time you have had opportunity to study over the matter and refresh your memory; and I now ask you what was the first time that you had knowledge of Daniel Drawbaugh's talking-machine, so far as you are able to positively remember?

A. In 1874.

Q. 12. Will you state what you knew about in 1874, and how you happened to know about it at that time?

A. I was there during that whole winter, and I got a safe made for my sister, and also a tent and stove.

Q. 13. For what purpose did you get the tent and stove made?

A. To go trapping.

Q. 14. Where were the tent and stove made, and by whom?

A. The stove was made in Daniel Drawbaugh's shop by George Drawbaugh; the tent was—in the first place, George cut it out, and some lady sewed it together in Milltown; and then it was moved to Daniel Drawbaugh's shop; there we oiled and painted it.

Q. 15. Were that tent and stove used in trapping during that winter or not?

A. It was used in the spring of 1875, in March.

Q. 16. Where and by whom?

A. On the Yellowbreeches creek, by me and Mr. George Drawbaugh.

Q. 17. In the winter of 1875–6, when you, with Joseph Ditlow and David Ditlow, trapped on the Conodoguinet creek with the kit which had been brought back from Indiana in the fall of 1875, was any use made of the tent and stove which you and George Drawbaugh had made in the winter of 1874–5?

A. Yes, sir.

Q. 18. What use was made of them that winter?

A. We used it for drying our fur.

Q. 19. And in the following winter—1876–7—when you, Joseph

Ditlow, David Ditlow, and Hiram Drawbaugh trapped together in Perry county and used the kit which had been brought back from Indiana in the fall of 1875, was any use—if so, what use—made out of the tent and stove which you and George Drawbaugh had made at Milltown in the winter of '74 and '5?

A. Yes, sir; it was used for drying fur in.

Q. 20. What was the last winter—you ever trapped in Pennsylvania?

A. 1876–7.

Q. 21. Then, if I understand you correctly, during the last two winters that you trapped, to wit: the winters of '75–6 and 1876–7, you used a double outfit, including both the kit which had been returned from Indiana and the tent and stove which you and George Drawbaugh had made in the winter of 1874–5; am I correct?

A. Yes, sir.

Q. 22. And the tent and stove which you and George Drawbaugh made had been used one spring before that; am I correct?

A. Yes, sir.

Q. 23. What is the name of your sister for whom you got the safe made that you refer to in your twelfth answer?

A. Mary Evans; she is the wife of Jacob Evans.

Q. 24. Jacob Evans was examined as a witness on behalf of complainants last winter, and testified in his answer 17, (p. 976, complainants' printed record,) that he was married to Mary A. Ditlow in September, 1874; does that agree with your recollection?

A. Yes, sir.

Q. 25. Had your sister been married or not at the time when you got the safe made which you mentioned in your twelfth answer?

A. She was married.

Q. 26. How long was it after her marriage that you got the safe made for her?

A. I don't remember the exact time, but it was soon afterwards.

Q. 27. To the best of your recollection, was it within a month afterwards, or longer than that?

[*Objected to as leading, inquiring for guesswork, and otherwise incompetent.*]

A. It might have been a month, but I don't think it was any longer.

Q. 28. Which was made first—the safe, or the stove and tent?

A. The stove and tent.

Q. 29. Who made the safe?

A. George Drawbaugh.

Q. 30. Do you remember what it was made out of?

A. Yes, sir; it was made out of a bureau that my mother had.

Q. 31. Was it was is called a kitchen safe?

A. No, sir; I don't think that is what they called it; they didn't have it in the kitchen; they used it for keeping dishes in, I suppose; I don't know exactly myself; it is something I never paid much attention to.

Q. 32. Where was your sister living when that safe was made and delivered to her?

A. She was living at Etter and Shanklin's mill.

Q. 33. Where was that safe made?

A. At Daniel Drawbaugh's shop.

Q. 34. Where was the stove made which George Drawbaugh made that year for trapping purposes?

A. In Daniel Drawbaugh's shop.

Q. 35. While this safe and the stove and tent were making at Daniel Drawbaugh's shop, how frequently were you in the shop, if at all?

A. I was there most of my time.

Q. 36. You have stated that you knew of Daniel Drawbaugh's talking-machine in 1874, and in answer to the question how you happened to know about it at that time, you referred to the making of the safe and the stove and tent. Will you tell us what knowledge you had of the talking-machine at the time the safe and the stove and tent were making?

[*Objected to as assuming and leading.*]

A. I was there in the shop; and while George Drawbaugh was making the stove, Dan he was experimenting on a new machine; and he got George and I to go down-stairs and listen. And he talked to George; and then George told him to talk to me; that I would listen. We had lots of fun in them days with Dan. He wanted to know whether we understood. I understood it well enough, but George told me to tell him that I don't understand it; and it made Dan awful mad. He flew up and said I was the damnedest dumbest man in America, and I should get out of his shop. That is all of that answer.

Q. 37. Do you mean to be understood that while Daniel Drawbaugh was talking through his machine, George and you listened down-stairs at the machine?

[*Objected to as leading.*]

A. Yes, sir.

Q. 38. And that when you listened you heard and understood through the machine what came through it?

[*Same objection.*]

A. Yes, sir.

Q. 39. And that at George Drawbaugh's suggestion, in order to tease Daniel Drawbaugh, you reported to him that you did not understand?

[*Same objection.*]

A. Yes, sir.

Q. 40. When you testified last winter at Philadelphia, did you have in mind these matters of the making of the safe and of the stove and tent there at Daniel Drawbaugh's shop?

[*Objected to as leading and incompetent.*]

A. No, sir.

Q. 41. Who, if anybody, first called your attention to the making of the safe at Mr. Drawbaugh's shop in the fall or winter of 1874?

A. My sister, Mary Evans.

Q. 42. When did she first call your attention to it, and where?

A. When I came back from Philadelphia last winter. It was over at Eichinger's mill, where she lives now.

Q. 43. Who first called your attention to the making of the stove and tent at Mr. Drawbaugh's shop that winter, and where?

[*Objected to as assuming and incompetent.*]

A. Mr. Alexander Milner, at Porter county, Indiana.

Q. 44. When did he call your attention to it?

A. After I went out there last spring, after giving my testimony at Philadelphia.

Q. 45. Tell us how it happened that Mr. Milner called your attention to the making of the stove and tent.

A. Me and my brother talked about it on the way coming back from Philadelphia, and we made up our minds that we seen the talking-machine before 1877; and I told him that if we did we surely told it to some one out there in Indiana; I asked Mr. Milner whether I ever told him anything, and he said that I did—told him about the time we

made the tent and stove, that we had lots of fun with Daniel Drawbaugh.

Q. 46. Do you think that your first knowledge of Mr. Drawbaugh's talking-machine was obtained at the time that the safe, and the tent, and the stove were made, or that you had seen or heard of the talking-machine before that time? What impression, if any, have you on your mind about that?

[*Objected to as inquiring for impressions or conclusions, not fact, also as palpably designed to lead the witness to qualify or contradict his statement already made that the first time he had knowledge of Daniel Drawbaugh's talking-machine, as he now states, was in the year* 1874.

Respondents' counsel says that the objection entirely misstates the witness' previous testimony, which was not to the effect that the first knowledge he ever had of Daniel Drawbaugh's talking-machine was in 1874, *but to the effect, as will be seen by reading question eleven, that the first knowledge he had of it which he could "positively" remember was in* 1874; *and the question now asked neither leads to nor calls for anything contradictory of that statement or inconsistent with it, but simply inquires whether the witness has or has not any impression on his mind of having known or heard of Mr. Drawbaugh's talking-machine before that positively remembered time of making the safe, stove, and tent.*

Complainant's counsel renews his objection and the statement therein embodied; and further objects to the question that the witness' impressions, as distinguished from actual and positive recollection, are not evidence, and also that the question is leading.]

A. I am satisfied that I had seen it before that; the reason why—my mother and sister told me that I used to come home when my father was living and tell them about it; and I have reason to believe my mother.

Q. 47. Will you state whether or not Mr. Daniel Drawbaugh or any of his relatives have ever said or done anything to refresh or influence your memory in this case?

[*Objected to as leading; and if it was intended to be inquired of in good faith, that it ought to have been extended to all that has passed between the parties since the witness testified in Philadelphia.*

Respondents' counsel says that for the purpose of saving time he prefers to sum up the whole matter in one question, leaving Mr. Howson to cross-examine as he sees fit.

The question is further objected to by Mr. Howson as asking not for actual facts and occurrences, but the mere opinion or conclusion of the witness as to the effect thereof.]

A. No, sir; they have not. Daniel Drawbaugh and I and my brother walked down to the shop, and Daniel said: "Boys, if you can do anything for me, and do it honest, I want you to do it." That was all Daniel said.

Q. 48. While your brother Joseph was under examination here in December, 1883, he testified, in substance, that after his return from Philadelphia, where you testified in December, 1882, a conversation occurred with Mr. George W. Mumper, in Mr. Mumper's barn-yard, relative to Daniel Drawbaugh's talking-machine, and that the persons present at the time were yourself, your brother Joseph, Mr. George W. Mumper, and Mr. John Free; have you any recollection of that fact or not?

[*Objected to as leading.*]

A. Yes, sir; I have.

Q. 49. Will you state to us what that conversation was, as you remember it?

A. We went down there, and Mr. Mumper was out at the barn doing his feeding; and he was very glad to see us; and he showed us his stock. He brought out a very nice horse that he had, and said that he was looking for a buyer to come and take him away. Then he said he thought it was strange when he heard that we was in Philadelphia and testified against Drawbaugh; we told him that it was a good while, and we had forgotten it; and he said that he had been up in Daniel Drawbaugh's shop in 1874 and seen the talking-machine, and Dan wanted him to go in partnership with him; and he said he was a damn fool—if he had went in with Dan he would have made his fortune.

Recess until 2, P. M.

[Examination of Abraham Ditlow suspended at this point to take depositions of George B. Eyster and John B. Heck, hereinafter printed.]

Abraham Ditlow cross-examined by Mr. Storrow:

Cross-Q. 50. Quite a number of persons by the name of Ditlow have been mentioned in this testimony; how many families of that name were there living at or near Milltown?

A. Two families.

Cross-Q. 51. Who were the heads of those two families?

A. David Ditlow and Abraham Ditlow; there were three brothers, George, and David, and Abraham; George died, and David married his widow.

Cross-Q. 52. What children did George leave, who grew up?

A. David, Alfred, George, Hiram, and Annie Ditlow.

Cross-Q. 53. What children did David have, who grew up?

A. Lillie and Emma Ditlow.

Cross-Q. 54. I suppose that George's children and David's children lived at David's, did they?

A. They called it their home; they weren't there all the time.

Cross-Q. 55. Is Mrs. Annie McCleaf, of Fayetteville, who testified for the defendants, (see respondents' printed sur-rebutting record, p. 445,) the daughter of George Ditlow whom you have named as Annie?

A. Yes, sir.

Cross-Q. 56. She testified that her father's name was David Ditlow; I suppose she meant step-father, did she?

A. They call him father; he is their step-father; yes, sir.

Cross-Q. 57. She testified that her brother married one of John B. Drawbaugh's daughters; which brother was that?

[*Objected to as wholly immaterial and irrelevant matter not referred to in the examination-in-chief.*

A. Alfred Ditlow.

Cross-Q. 58. Who were the children of Abraham Ditlow who grew up?

A. Samuel, Joseph, Abraham, Mary, and Emanuel Ditlow.

Cross-Q. 59. The Abraham Ditlow, the son you refer to, is yourself, I suppose?

A. Yes, sir.

Cross-Q. 60. Whom did Mary Ditlow marry?

A. Jacob Evans.

Cross-Q. 61. You have undertaken to state a visit to Mr. Mumper last winter, when you say you had a certain conversation with him; can you tell me just when that was?

A. No, sir; I can't.

Cross-Q. 62. Can you tell me what day of the week it was?

A. No, sir; I wouldn't be able to tell.

Cross-Q. 63. Are we to understand from your thirty-sixth answer that your recollection is of just one talk through the talking-machine

when you had lots of fun with Dan; or is it your recollection that you listened at the machine a number of times?

A. A number of times. I might have not talked through a number of times, but I know I was there, and George and Dan talked through.

Cross-Q. 64. Do you mean that you saw George and Dan talk through a number of times? Is that your recollection?

A. Yes, sir.

Cross-Q. 65. How long was this going on? Was it all within one or two days, or was it spread over a good while?

A. It was spread over a good while. Whenever he would make something new, why, then they would try it.

Cross-Q. 66. What do you mean by something new—what kind of thing?

A. New talking-machine. He was experimenting, and when he got something new he would go and try it to see whether it worked.

Cross-Q. 67. I understand you to say that your recollection is that you didn't listen more than once yourself. Is that your meaning?

A. I am satisfied I listened more, but a person can't just remember how often, for I never paid much attention to such a thing as that.

Cross-Q. 68. Is it your recollection at present that you ever talked through it?

A. I wouldn't like to say that I ever talked through it; I don't remember of that.

Cross-Q. 69. Was this while George was working on the safe?

A. I wouldn't say that he was working on the safe, but it was during that winter.

Cross-Q. 70. Is it your recollection that you saw these experiments after George got through working on the safe?

A. Yes, sir.

Cross-Q. 71. And also while he was working on the safe?

A. He might have been working on the safe; it is hard to tell about that; sometimes you could hardly get him to work; he wouldn't work more than two hours a day.

Cross-Q. 72. I infer from that that it was a good while after he began at the safe before he finished it; is that the fact?

A. I expect it was, for if my memory is right it was there all winter; I think it wasn't taken away until the spring.

Cross-Q. 73. And do you mean to have it understood as your recol-

lection that you took part in and witnessed this experimenting with the talking-machine while the stove and tent were being made also?

A. Yes, sir; during that winter; the tent and stove were made before the safe.

Cross-Q. 74. Were you doing any work that winter?

A. Not as I remember—not any more than helping George there and getting ready to go trapping; I might have threshed around—I can't remember that.

Cross-Q. 75. After you testified last winter in Philadelphia, you came up to Cumberland county, did you not?

A. Yes, sir.

Cross-Q. 76. How long did you stay in the neighborhood of Eberly's Mills before you went west?

A. I stayed until towards the last of February. My brother Joseph wrote to me to come out and help him to move; and they move there about the 1st of March.

Cross-Q. 77. As you testified on the 30th of December, 1882, I should judge that you were around here nearly two months after that; is that the fact?

A. Yes, sir.

Cross-Q. 78. It has appeared that in January, and soon after you testified at Philadelphia, you spent Saturday night at George Drawbaugh's, and you and Dan and some others were down at Drawbaugh's shop on Sunday; is that the fact?

A. I don't know whether it was Saturday night or not; I know I stayed over night with George, and that we went down to the shop.

Cross-Q. 79. While you were down at the shop on that occasion, did Drawbaugh show you any of his machines?

A. Yes, sir.

Cross-Q. 80. Name some of them.

A. I couldn't name them. I don't know the name of them. He had a good many of them.

Cross-Q. 81. What kind of machines did he show you?

[*Objected to as new matter not referred to in the examination-in-chief, and as immaterial and irrelevant.*]

A. I don't know as I can tell you the kind. The one that they talked through was hung up against the wall there. It was a square box.

Cross-Q. 82. Did you do any work while you were here last January and February, and if so, what and for whom?

[*Same objection as to question* 81.]

A. I didn't do no work that I know of—not that I got paid for, at any rate. I might have done some for accommodation; I couldn't say as to that.

Cross-Q. 83. Whom were you with in those two months—who were your companions?

[*Same objection.*]

A. I was with a good many—my companions; I don't know as I had any particular one. I went around to see all my friends.

Cross-Q. 84. Name the friends you went around to see, or some of them.

A. I visited Alfred Ditlow, Robert McCleaf, and David Ditlow, my uncle; my brother Samuel, and was over at my sister's to see my mother and my brother Emanuel. I was at a good many more places than that; for I made quite a round.

Cross-Q. 85. When did you first come on from the West after you went back last spring?

A. I left out there about the middle of October, or along there.

Cross-Q. 86. Did you come to Harrisburg or Cumberland county then, and have you been about here ever since?

A. I came to Harrisburg at night, about twelve o'clock, and then went over the river; I wasn't here all the time, I was back and forward; and I went west again, and stayed probably two weeks.

Cross-Q. 87. With the exception of that trip to the West you have been at Harrisburg, or over the river near here, ever since you came on in October, have you not?

A. Yes, sir.

Cross-Q. 88. When you came on in October you came at the defendants' request, and they paid your expenses; is not that the fact?

A. No, sir, that ain't the fact; I paid my own fare, and they gave me no money; they didn't exactly tell me to come on at that time; they said they would send for me and send money. Mr. Jacobs said he would send probably in two or three weeks for us; the reason why I came in was, I was working for Mr. Milner and he had a chance to hire a man in my place, and I thought I would come on in.

Cross-Q. 89. When and where was it, that Mr. Jacobs said he would send for you?

A. It was— I can't just exactly say where it was; it might have been there at Mr. Milner's; we went around to see Mr. Clifford and Mr. Milner, and he told them the same thing; it was some time in September, 1883, at Wheeler, Indiana; I couldn't exactly tell when it was.

Cross-Q. 90. What did you make that trip west for after you came in?

A. I went out—in the first place Emanuel and Jacob Evans were going to rent a farm out there; and I heard that they were going to send a man out to fetch them in from out there, and I told Mr. Drawbaugh that he might as well send me out there, that I could fetch them in as well as anybody else.

Cross-Q. 91. Fetch whom in?

A. Mr. Reed, Mr. Milner, Mr. Clifford, Mr. Hardesty and wife, and son and daughter, and Joseph Ditlow.

Cross-Q. 92. Have you done any work since you came on here in October last?

A. No, sir.

Cross-Q. 93. Where have you been living?

A. I have been staying most of the time at the White Hall hotel, Harrisburg.

Cross-Q. 94. Have the defendants paid your board there, or have you been boarding at your own expense?

A. I suppose they paid it; they said they would.

Cross-Q. 95. Is your mother living?

A. Yes, sir.

Cross-Q. 96. Where does she live?

A. She lives over in York county with Mr. Evans.

Cross-Q. 97. What have you been doing to occupy your time all this while since you came on?

A. I don't know whether I could tell you that. I have been loafing around; I have played a good bit of pool and some euchre; and sometimes I would go over to Mr. Evans and stay there a while, and visit my brother.

Cross-Q. 98. Have you been in Mr. Jacobs' office a good many times?

A. Yes, sir.

Cross-Q. 99. You have been in and out there nearly every day while you have been here, haven't you?

A. No, sir; not every day; sometimes it would be a week that I wouldn't get there.

Cross-Q. 100. Has Orlando Kahney been living at the White Hall hotel with you?

A. Yes, sir; the most of the time.

Cross-Q. 101. Has he been living there at the defendants' expense, too?

[*Objected to as calling for hearsay or for mere matter of opinion, and also as immaterial and irrelevant.*]

A. He was, before he went on the stand.

Cross-Q. 102. And he was for a considerable time after that, wasn't he?

[*Same objection.*]

A. He was there; I don't know as he was there all the time on their expense; I know that for a awhile he said he was there and said he was at their expense, and they stopped it off; and he hasn't been there at their expense since.

Cross-Q. 103. When was it that your mother and sister told you, as you have stated in your fortieth answer?

A. I don't know the exact time, but Mr. Jacobs and some one else came over, either this time or last winter when I was in; I don't know which time it was, but my mother mentioned it then; my mother had spoken to me pretty often about it.

Cross-Q. 104. I wish you would try and recollect whether it was this winter or last winter that it was spoken of when Mr. Jacobs was there?

A. I am pretty sure that it was this winter since I came in, but I would say positively.

Cross-Q. 105. It was at Jacob Evans' place, I suppose?

A. Yes, sir.

Cross-Q. 106. And it was there that your mother spoke to you pretty often about it, as you have testified in your last answer but one?

A. Yes, sir.

Re-direct by Mr. Hill:

Q. Q. 107. Have you been ready to testify at any time since you came in from the West, whenever it should suit the convenience of defendants' counsel to notify you and put you on the stand?

A. Yes, sir.

Q. Q. 108. You were notified a little over a week ago, that they wanted to examine you a week ago yesterday or to-day, were you not?

A. Yes, sir.

Q. Q. 109. And something interfered to prevent it, was there not?

A. Yes, sir.

Q. Q. 110. About the time your brother Joseph and the Hardesty's, Mr. Reed, Mr. Milner, and Mr. Clifford were on the stand, you were notified that you would be examined with them, and that was interfered with by the adjournment, which took place in order to enable Mr. Storrow to argue a case in Washington. Is not that the fact?

A. That is what they told me.

Q. Q. 111. You have been notified several times since that, that you would be examined right away, and your examination has been postponed by defendants' counsel when the time came; because they had other witnesses ready to examine who were anxious to get away, or whose examination they did not desire to delay. Is not that the fact?

A. Yes, sir.

Q. Q. 112. So far as you know, have you testified to anything here on the stand to-day that you did not inform defendants' counsel that you were ready to testify to when they first interviewed you on the subject last fall, except the conversation with your mother?

A. I don't understand that question.

[*Question read to witness again.*]

Q. Q. 113. The question is whether you told us last fall all that you have testified to concerning Mr. Drawbaugh's talking-machine?

[*Question objected to as highly improper.*]

A. Yes, sir; I told them.

Re-cross by Mr. Storrow:

Re-cross-Q. 114. Did the defendants' counsel tell you that John F. Rupp and D. A. Hamacher, of Shiremanstown, were witnesses who were anxious to get away, or whose examination they did not desire to delay?

A. No, sir.

Re-cross-Q. 115. Did they tell you that Mr. and Mrs. Young, of Harrisburg, were witnesses who were anxious to get away, or whose examination they did not desire to delay?

[*Objected to as a mere waste of time, and as argumentative and entirely*

immaterial, the witness having already testified on cross-examination that there were times since he came from the West when he was not in Mr. Jacobs' office for a week, and times when he was down at Mr. Jacob Evans' in York county; so that he has not been readily accessible at all times when he might have been put on the stand; and further, that it is none of the complainants' business whether defendants saw fit to put this witness on the stand at one time or another, nor is it of any materiality in this cause.]

A. They didn't mention any names, that I heard, to me.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 5th day of February, 1884.

FRED. M. OTT,
Examiner.

ABRAHAM DITLOW.

GEORGE B. EYSTER, *being produced, affirmed, and examined, saith:*

Examined by Mr. Hill:

My age is forty-two; residence Carlisle, Cumberland county, Pa.; I am the sheriff of Cumberland county at present.

Q. 1. Mr. Jesse Eicholtz, who was examined as a witness here in November, 1883, testified among other things that on the 6th day of November, 1873, he was at Daniel Drawbaugh's shop, at Milltown, and heard talk through Mr. Drawbaugh's talking-machines, and had a conversation with Mr. Drawbaugh about pecuniary matters, in which conversation your name was mentioned; and that afterwards he spoke to you about it; do you have any recollection of any such conversation with Mr. Eicholtz or not?

[*Objected to as leading.*]

A. Yes, sir.

Q. 2. Will you please state what you recollect of the conversation between you and Mr. Eicholtz?

A. He said first that he was down at Mr. Drawbaugh's, and went through his shop there and examined some of his inventions there; and he spoke of the talking-machine—asked me whether I had ever seen his talking-machine. I told him I had not seen it, but I had often heard of it. Then he said that I ought to go down to see it, that it would be

worth my while just to see it; and then he said if Mr. Drawbaugh had the means to go on with it he thought it would be a success—there would be money in it. He also said that if he had the money he would go into it; that Mr. Drawbaugh said he wanted to run it as far as Harrisburg, but he didn't have the means to do it himself and would like to get somebody to furnish the means; and he said, "George, if I could get the means like you could, I believe I would go into it."

Q. 3. Did Mr. Eicholtz say whether anybody else was with him on his visit to Drawbaugh's shop?

A. Yes, his wife was along; he said he took his wife along down with him.

Q. 4. You stated to Mr. Eicholtz that you had often heard of Mr. Drawbaugh's talking-machine; will you tell us where and under what circumstances you first heard of Mr. Drawbaugh's talking-machine, so far as you remember?

A. The first I heard of it, I had gone to Mr. George B. Heck's, who live there at Milltown, or Eberly's Mills as they call it; and he and I went to Mr. Drawbaugh's shop, when he had his shop right back of the grist-mill at Eberly's Mills; we were looking around through the shop at his different inventions that he had there, and then after we went out we got talking over the inventions of Mr. Drawbaugh; and Mr. George Heck said that I didn't get to see all his inventions; that he was working at one that he didn't show to every one—didn't want every one to see it; I asked him then what it was; he said it was a talking-machine.

Q. 5. If I understand you correctly, that was when Mr. Drawbaugh had his shop in the building which stands close by the grist-mill, and not in the old clover mill down on the Yellowbreeches, where his shop now is; is my understanding correct or not?

A. It is; yes, sir.

Cross-examined by Mr. Storrow:

Cross-Q. 6. Where did you have this conversation with Mr. Eicholtz?

A. I had it at Oyster's mill.

Examination taken, reduced to writing, and by the witness affirmed and subscribed to before me, this 5th day of February, 1884.

GEORGE B. EYSTER.

FRED. M. OTT,
Examiner.

JOHN B. HECK, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

My age is nearly forty-four; I reside in East Pennsboro' township, Cumberland county, Pa.; I am a farmer at present.

Q. 1. Are you a brother of Mr. George B. Heck, who formerly lived at Milltown?

A. I am.

Q. 2. Who administered upon your brother, George B. Heck's, estate after his death?

A. I did.

Q. 3. In the course of your administration upon this estate, did you make sale of any personal property?

A. I did.

Q. 4. Have you any paper here which will enable you to fix about the date of that sale?

A. I have the conditions of sale, which are dated the day of the sale.

Q. 5. Will you please produce it in order that the examiner may copy it upon the record?

A. Yes, sir; here it is.

[*Witness produces paper, as follows:*

"Conditions of Sale.
1st. The highest bidder to be the purchaser.
2nd. All persons purchasing goods amounting to five dollars and under shall pay cash.
3rd. All persons purchasing goods amounting over five dollars and upwards shall have a credit of eleven months, by giving their notes with approved security.
4th. Any person purchasing goods and not complying with the above conditions, or in case of any dispute arising in reference to sale of goods, said person shall be responsible for any loss arising from a second sale.
5th. No goods to be removed until the above conditions are fully complied with.
Given under my hand and seal this 13th day of September, 1873.
J. B. Heck, Admr. of G. B. Heck, dec'd.
Smoking about the barn and stables strictly prohibited."]

Q. 6. In whose handwriting is the signature to this paper?

A. In mine.

Q. 7. When was this paper written?

A. It was written on the morning of the day of sale. It might have been written the day before, but it was signed on the day of sale;

but I think it was written in the house on the morning of the day of sale.

Q. 8. This paper bears the marks of a nail or tack in each corner. How did that happen?

A. It is customary to read the conditions of sale before the sale begins. After being read, the conditions are tacked up in a conspicuous place, so that customers can see the conditions of sale at any time and govern themselves accordingly. I think the nail holes are where the conditions were tacked up.

Q. 9. I see that this paper is dated the 13th day of September, 1873. If I understand you correctly, that was the day of the sale.

A. Yes, sir.

Q. 10. When did your brother, George B. Heck, die?

A. To the best of my knowledge he died on the 9th day of July, 1873.

[*Cross-examination waived by Mr. Storrow.*]

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 5th day of February, 1884.

FRED. M. OTT,
Examiner.

J. B. HECK.

Adjourned until Thursday, February 14, 1884, at 10, A. M., in order to enable Mr. Hill to attend the argument of a case in another circuit.

After adjournment by the examiner from day to day from February 14, 1884, examination resumed by consent on February 25, 1884, at 3 P. M.

Present, Mr. Storrow and Mr. Howson for complainants and Mr. Hill Mr. Jacobs for respondents.

JOHN K. KEIM, *being produced, affirmed, and examined, saith:*

Examined by Mr. Jacobs:

My age is 30; I reside at Steelton, Dauphin county, Pennsylvania; I am working for the Pennsylvania Steel Company at that place.

Q. 1. Are you acquainted with George W. Crossley, who formerly resided at Marysville, Perry county, Pennsylvania?

A. Yes, sir; he is my uncle—married to my father's sister.

Q. 2. It has appeared in evidence in this case that Mr. Crossley lived upon the Fenn farm in Marysville from April 1st, 1877, until April 1st, 1878; will you state whether or not you lived there with him?

A. Yes, sir; I lived with him.

Q. 3. How long did you live there with him?

A. A year.

Q. 4. Did you or not go there with him?

A. Yes, sir.

Q. 5. And move away with him?

A. Yes.

Q. 6. Whilst you were living there with Mr. Crossley, did you or not do any work for George W. Kissinger on the Draper farm in the borough of Marysville; if so, please state what that work was.

[*Objected to as assuming and leading.*]

A. I helped to thresh and helped to put out the seeding.

Q. 7. Whilst you were doing that work for Mr. Kissinger, where did you get your meals?

A. At Kissinger's and at Crossley's; dinner and supper we got at Kissinger's generally, and breakfast at Mr. Crossley's.

Q. 8. How did they get the water to supply Kissinger's family at that time?

A. Got it in the hollow at the spring.

Q. 9. How was it brought from the spring to the house?

A. To the best of my knowledge, it was carried in buckets.

Q. 10. If you heard any one there at that time say or explain how it had been brought from the spring to the house at any previous time, will you please state what you heard said about it?

[*Objected to as incompetent and inquiring for hearsay.*]

A. I heard them say it was brought in pipes at some time.

Q. 11. Did you or not see any pipes which you understood were intended, or had been used, for the purpose of conveying water to the house?

[*Objected to as leading and incompetent.*]

A. Yes, sir; I seen a pipe that came up from the ground close by the house that, I reckon, was for that intention.

[*Answer objected to by Mr. Howson as not evidence.*]

Q. 12. Will you tell us what was the form of that pipe and of what material it was composed?

A. To the best of my knowledge it was a round pipe that came up out of the ground and had an elbow on it—something like an elbow. I don't know just what material you might call it—what all pipes are made of, I guess.

Q. 13. Was it made of metal or wood or clay or what?

A. Metal.

Q. 14. Do you remember what kind of metal?

[*Objected to in view of witness's answer to interrogatory* 12.]

A. No, sir; I couldn't say.

Q. 15. To what height did the pipe rise out of the ground?

A. To the height that you could put a tub under, to the best of my knowledge.

Q. 16. Whom did you hear say, at the time I have been inquiring about, that the water had been brought from the spring to the house in pipes at some time?

A. The men talked it in the barn.

Q. 17. Did you hear any reason assigned why the water was not conveyed through pipes at the time you were there, but had to be carried instead?

[*Objected to as incompetent and inquiring for hearsay.*]

A. Yes, sir; in at our meals the women was saying that it was out of fix.

Q. 18. That what was out of fix?

A. To the best of my knowledge the pipe that was to carry the water to the house.

Q. 19. What women did you hear speak of it?

[*Same objection as to question* 17.]

A. The Kissinger women.

Q. 20. Were you or not informed at that time by what means the water was led, or caused to flow, or forced through the pipe from the spring to the house?

[*Objected to as inquiring for hearsay, as leading and otherwise incompetent.*]

A. Not that I recollect of.

Q. 21. After doing the work for Mr. Kissinger, mentioned in your 6th answer, did you ever at any time work for him upon the Draper farm?

A. No; not after the seeding and threshing.

Q. 22. Since you moved away from the Penn farm with Mr. Crossley, have you ever been upon the Draper farm?

A. No.

Cross-examined by Mr. Howson:

Cross-Q. 23. Where did you live after moving away from the Fenn farm?

A. To the Pennsylvania Steel Works I went first.

Cross-Q. 24. When was it you went to the Pennsylvania Steel Works.

A. Right away when Crossley left Fenn's farm.

Cross-Q. 25. What year was it, and what time of year, that you went to the Pennsylvania Steel Works?

A. In the fall of the year; I don't recollect what year.

Cross-Q. 26. Was the work which you did for Mr. Kissinger on the Draper farm done all at one time or at different times?

A. At different times.

Cross-Q. 27. At how many different times?

A. We done some threshing before seeding and some after seeding.

Cross-Q. 28. Are we to understand, then, that you were at work there at two different times; and if yes, how far apart were those two different times?

A. To the best of my knowledge about a month, I reckon.

Cross-Q. 29. In what month or months of the year?

A. In the fall of the year, we put out the fall seeding.

Cross-Q. 30. How long, or about how long, before you went to work for the Pennsylvania Steel Works?

A. I went to work for the Pennsylvania Steel Works after the 1st of April.

Cross-Q. 31. Was it the fall before you went to work for the Pennsylvania Steel Works that you worked for Mr. Kissinger on the Draper farm?

A. Yes, sir.

Cross-Q. 32. Have you been working for the Pennsylvania Steel Works ever since you left the Fenn farm?

A. No.

Cross-Q. 33. Who else have you worked for in the meanwhile, and when and where?

A. I have been about two years in Kansas working at different work.

Cross-Q. 34. How many, or about how many, days were you working for Kissinger on the Draper farm and who worked with you?

A. About three or four day. Kissinger's three men and my uncle Crossley worked with me; by Kissinger's three men I mean Kissinger and his two boys.

Cross-Q. 35. What boys?

A. Cyrus—I can't just think of the other one's name just now.

Cross-Q. 36. You have referred to Mr. Kissinger's women folk; what women folk do you mean?

A. Sue Kissinger and two other women of Kissinger's; Ididn't know their names—I wasn't there long enough to get acquainted with them.

Re-direct by Mr. Jacobs:

Q. Q. 37. I understand from your cross-examination that you have twice gone to work for the Pennsylvania Steel Company; once about the 1st April, and once in the fall of the year; is that the fact?

A. I hardly know what time of the year it was when I first went down to the steel works to work; the last time was some time in January.

Examination taken, reduced to writing, and by the witness affirmed and subscribed to before me, this 25th day of Febuary, 1884.

FRED. M. OTT,
Examiner.

JOHN K. KEIM.

FRANK F. LANDIS, *being produced, affirmed, and examined, saith:*

Examined by Mr. Hill:

My age is 39; I resid at Waynesboro', Pennsylvania; I am in the machine business; I am master mechanic of the Geyser Manufacturing Company.

Q. 1. How far is Waynesboro' from Harrisburg?

A. About sixty-five or seventy miles; I don't know the exact distance.

Q. 2. How long have you been in the employ of the Geyser Manufacturing Company?

A. A little over four years.

Q. 3. How long have you lived at Waynesboro'?

A. A little over four years.

Q. 4. Before you went to Waynesboro', and in the employ of the

Geyser Manufacturing Company, where did you live and what business were you engaged in.

A. In Lancaster, Pennsylvania; I was engaged in the manufacture of steam engines and boilers.

Q. 5. What was the name of the concern for which you were so engaged at Lancaster?

A. F. F. & A. B. Landis.

Q. 6. How long were you employed by that firm, and in what capacity?

A. From the fall of 1876 till September, 1879; I was one of the firm.

Q. 7. Where and from whom did you first get any knowledge of the principle of the electric speaking telephone?

A. At the shop of Mr. Drawbaugh—George Drawbaugh is his name, isn't it?—I don't know the name of the place—from Mr. Drawbaugh at his shops.

Q. 8. How many times were you ever at Mr. Drawbaugh's shop in your life?

A. Once.

Q. 9. Had you been acquainted with Mr. Drawbaugh before that visit to his shop or not?

A. No, sir.

Q. 10. In what county is that shop and how far from Harrisburg?

A. Cumberland county; I would suppose it was not over five or six miles from Harrisburg.

Q. 11. As you do not remember the name of the place where the shop was, do you think you would know the name of the place if you heard it mentioned?

A. Yes, sir.

Q. 12. Was it Milltown or Eberly's Mills?

A. Eberly's Mills, I think.

Q. 13. How many times were you ever at Eberly's Mills?

A. I was there at the shop where Mr. Drawbaugh was at work, but know nothing about any mills of that name.

Q. 14. Assuming that the village or place where Mr. Drawbaugh's shop was is called by the name of Eberly's Mills, what I want to know is how many times you were ever at that village or place?

A. Once.

Q. 15. What business, if any, caused you to go there at that time?

A. [Witness refers to paper.] In November, 1877, Mr. J. E. Shettel of Shepherdstown wanted to buy a steam engine for threshing and he had written to us—the firm of F. F. and A. B. Landis—for prices and terms; I then went to see him, and while there Mr. Shettel and Mr. Theodore Grissinger—Mr. Grissinger was acting as an agent for the sale of our engines—wanted me to go to see an electric clock that Mr. Drawbaugh had in his shop; the way I understood it at the time, they were about taking an interest with Mr. Drawbaugh to manufacture the electric clock, and the reason they wanted me to go and see this clock was they wanted me to take one of the clocks as part pay for the engine. Mr. Grissinger then got his team and he and Mr. Shettel and myself drove down to Mr. Drawbaugh's place, and while in the shop Mr. Drawbaugh showed me the clock and explained the working of it. While speaking of the different uses of electricity, I mentioned to Mr. Drawbaugh that I had read an account of an experiment made with an apparatus for transmitting speech by the current of electricity. When I mentioned or touched that subject Mr. Drawbaugh dropped the clock question and told me that that was an old thing; that he had found out and made instruments over ten years ago that would do the same thing; and he then went into an adjoining room to the one we were in and asked us all to come in; he then went on to explain the manner in which it was done; he then showed me a small wooden box, as near as I can remember, about 3 inches in diameter with a funnel-shaped hole on the one side; he placed this over his mouth and spoke into it—also sang in a humming way, which produced a vibration on a metal disc, which produced a sound; and then went on to explain in what manner it was transmitted by an electric current, which gave me the idea of the principles of the telephone as I now understand it.

[*Answer objected to by Mr. Howson as not rebuttal, and so much of it as relates to alleged declarations made by Mr. Drawbaugh to the witness objected to as not evidence.*]

Q. 16. You say that Mr. Drawbaugh invited you all to follow him into that adjoining room; did you all go in there with him?

A. Yes, sir.

Q. 17. You also state that Mr. Drawbaugh showed you a small instrument about three inches in diameter as near as you can remember it, but you did not state whether that was the only telephone instrument

that he showed you there; if he showed you any other telephone instruments there, will you please state how many you remember?

[*Objected to as assuming and leading.*]

A. The one he showed me, that I just referred to or spoke of, he used to illustrate the arrangement in a box that he had fastened to the wall in the room; I am not positive that he showed me any other than those two, but spoke of a number of experiments that he had made and in what way.

Q. 18. If I understand you correctly, he had one instrument in the shape of a box fastened to the wall of the room, and in trying to explain to you that instrument, he took in his hand another small instrument about three inches in diameter and used it to illustrate his explanation; is my understanding correct or not?

[*Objected to as leading.*]

A. Yes, sir.

Q. 19. Do you remember of what material the box was constructed which was fastened to the wall of the room?

A. Yes, sir; wood.

Q. 20. What was its appearance, as you remember it?

A. As near as I can recollect, it was a wooden box ten or twelve inches high, and from six to eight inches wide with a mouthpiece or funnel-shaped hole resembling the mouthpiece or hole in the small instrument that he spoke through.

Q. 21. Please look at the instruments now on the table before you marked "A," "B," "C," "C reproduced," "D," "E," "F," "G," "L," "H," "O," "H," and "I," and state whether you have ever seen any of them before this day, and if so which ones, and where, and when you first saw then?

[*Objected to because no sufficient foundation has been laid for the question.*]

A. This instrument,'[taking up "D,"] as near as I recollect, is the one he showed me or is the nearest like it, and the large box "H," as near as I can recollect, the size of the one I saw fastened to the wall.

Q. 22. How do the shape and appearance of the large box "H" compare with the shape and appearance of the box you saw fastened up against the wall?

[*Objected to as leading.*]

A. My recollection is that in size it is what I saw; I also remember the screws on the side, [witness puts his hand on the binding posts of "H,"] and the bell on the top.

Q. 23. This instrument "H" has its front side somewhat sloping or inclined; what do you remember about the instrument which you saw at Mr. Drawbaugh's shop in that respect?

[*Objected to as leading.*]

A. I couldn't say about that positively.

Q. 24. Did Mr. Drawbaugh open the large instrument that was fastened against the wall?

[*Objection continued.*]

A. I think he did.

Q. 25. While Mr. Drawbaugh was discussing and explaining these instruments at his shop, were Mr. Shettel and Mr. Theodore Grissinger present in the room?

A. We all went into the room together and I remember they were in at least part of the time.

Q. 26. Do you remember whether they or either of them took any part in the conversation about the telephone?

A. I don't think that they were much interested in it, as I cannot remember of them saying anything about it. Their conversation while there was about the electric clock.

Q. 27. How long were you there in Mr. Drawbaugh's shop on that occasion?

A. A very short time; I don't think it was over an hour and a half.

Q. 28. You seemed a little while ago in doubt about the first name of Mr. Drawbaugh; do you think you would remember his first name now if you heard it?

A. I was kind of confused in the names of the two Drawbaughs, and I think I took Daniel for George.

Q. 29. Do you now think it was Daniel Drawbaugh that you saw and talked with at the shop?

[*Objected to as leading and incompetent.*]

A. Yes, sir.

Q. 30. Near the beginning of your examination here to-day, you

took from your pocket a paper and referred to it or looked at it; what is that paper?

A. That is a letter-press copy of a letter written by A. B. Landis to J. E. Shettel, Shepherdstown, Pennsylvania, giving him prices and terms for the steam engine which he wanted to buy, and from which I fix the date when I was to see him—when we went to see Mr. Drawbaugh. I said the date; I mean within a short time of the date.

Q. 31. How soon after the date of that letter was your visit to Mr. Drawbaugh's shop?

A. It was a very short time—within a week.

Q. 32. What is the date of the letter?

A. November 17, 1877.

Q. 33. When was that letter-press copy made which you have here in your hand, and where, and by whom?

A. On the day that it was written and is dated, at Lancaster, Pa.; by A. B. Landis, my brother.

Q. 34. In whose possession has that letter-press copy been from the time that it was written, Nov. 17, 1877?

A. It was in the possession of F. F. and A. B. Landis till the fall of 1879, and from that time to within a few days it was stored in the attic of the office building of the Geyser Mfg. Co., since which time I tore out a section of the book containing this letter at my residence; I was asked by the party notifying me to come here to testify to bring along anything by which I could recollect the date of my being at Mr. Drawbaugh's place; the book was very large, and in order to avoid bringing it along I tore out a section or a number of leaves—from page 166 to 183 inclusive. This letter is on page 182.

[*Witness produces the pages from* 166 *to* 183 *inclusive.*

Respondents' counsel offers in evidence the letter dated November 17, 1877, *referred to by the witness, which is as follows, the original to be marked for identification and to be produced when called for, and the following copy by consent to be substituted therefor upon the record.*

Complainants' counsel objects to the press copy referred to in the foregoing proffer as the original, as not competent in the absence of the rest of the book out of which it is alleged to have been torn.]

The letter is as follows:

"LANCASTER, PA., *November* 17, 1877. 182

J. E. SHETTEL, *Shepherdstown, Pa:*

DEAR SIR: Yours rec'd. We send you by this mail our circular of portable engines with photographs, from which you can receive an idea

of what we now make. The engine you now have is a very good one, but this one we now make far excels that one, from the new improvements, as you see, which are very valuable. Also in the way we manufacture them, as we now make every part interchangeable, so that any part can be replaced without any trouble and very little delay, by simply sending to us for such part, as we have all parts on hand. You will see by reading circular that everything is improved and is all that is wanted in the way of a threshing engine, and with which we can guarantee entire satisfaction. We consider our present machine one of the best made, and are confident it will recommend itself to that end. As you are desirous of having one of our new engines, you ask in regard to price, etc. We are very anxious to get our engines out and would like to get some out now yet this year, so as to become introduced to a certain extent this year yet, and as we are very much wanting money to run out a stock of these engines for next season we will sell at a very low price at this time, which we will here quote to you, asking you to keep the same to yourself as confidential, as we will not, in the season of selling, sell at such prices. Our eight-horse power which is the only size we have completed yet, we list $1,000 00; we will sell you one of these for *cash now* for 25 per cent off the list, which would make same cost $750 00. At this we will sell now for the above reasons, and hope you will avail yourself of the opportunity. In regard to trading your engine, we could not do, as you could do better by selling it elsewhere, and we could not dispose of it side of our present engine. *Let us hear from you in regard to this by return mail.* We could ship immediately if hearing from you now soon, as we have one on hand.

Yours very respectfully,

F. F. & A. B. LANDIS."

Adjourned until February 26, 1884, at 10 A. M.

February 26, 1884, 10 A. M.

Examination resumed; present, same counsel.

Examination of F. F. Landis by Mr. Hill, continued:

Q. 35. Independently of the letter-press copy, to which you have referred to refresh your memory, would you or not be able to testify from your own memory what year it was that you made that visit to Mr. Drawbaugh's shop?

A. My recollection or impression was that that was the time, and after looking through the letter book and finding the letter written to Mr. Shettel, I was satisfied that that was the time and didn't think it necessary to hunt up the letters received from him—Mr. Shettel—which, I think, are among the letters tied up in bundles in the attic of the office of the Geiser Manufacturing Company.

Q. 36. When you were at Mr Drawbaugh's shop on the occasion re-

ferred to, was anything, and if so, what, said about his patenting his telephone invention or about his financial condition?

[*Objected to as incompetent and not rebuttal.*]

A. Yes, sir; when he had shown me the models and while he was explaining the principle on which they were to work, or worked, I asked him whether he had a patent on it or why they didn't get it patented. He said he was unable to do anything with it as no one seemed to have any faith in the arrangement; that the people were all too slow and couldn't understand it as he did; I remember of him also saying that some thought he was crazy. This is as near as I can remember the substance of his reply to me after asking him why he didn't get it patented.

Q. 37. On what floor of the shop did you see those telephones at that time?

[*Objected to as assuming.*]

A. On the second floor; that is my impression. We went up a flight of stairs; I hadn't been down in the lower part and don't know whether there was more than one floor below it or not.

Q. 38. Was the flight of stairs which you went up outside or inside of the building?

A. I am not certain about that but my impression is that it was on the outside.

Q. 39. If I understand you correctly, you went into a room and examined the clocks and talked about them, and then when the telephone was mentioned Mr. Drawbaugh invited the party into an adjoining room and exhibited it; is this correct?

A. Yes, sir.

Q. 40. How many clocks were there in the room which you first went into for the purpose of examining the electric clocks?

A. I saw two—one a large clock about six feet high standing against the partition to the left of the door that we entered the room, and then a smaller one hanging near a window with wires attached to plates under the soil in a large flower pot with plants growing in it.

Q. 41. Referring now to the other room in which you saw the telephones; were there any clocks in that room?

A. I don't remember of seeing any.

Q. 42. Describe, as well as you can, where the telephone box was

fastened against the wall in that room, and how high it was from the floor.

A. The box was fastened to the right of a window, right opposite the door through which we entered the room; I suppose, as near as I can recollect, it was about four and a half or five feet from the floor.

Q. 43. What is your recollection as to the size of that room?

A. My impression is that it was in the neighborhood of twelve by eighteen or twenty; it may have only been ten feet wide.

Q. 44. Do you remember where Mr. Drawbaugh got the small instrument that he showed you—whether from a bench, or table, or cupboard, or what?

[*Objected to as leading.*]

A. I do not remember where he got it, but my recollection is that he brought it from the room we were in first.

Q. 45. Referring to that telephone box which was fastened up against the wall, was there anything to prevent any person who might enter the room from seeing that box?

[*Objected to because it has not yet been made to appear that the witness has, or can have, any means of knowledge on the subject.*]

A. I do not know.

Q. 46. I think you did not understand my question; I mean was the box in plain sight in the room or not?

[*Objected to as leading.*]

A. Yes, sir; it was; there was nothing over it.

[*Deposition objected to as not rebuttal and cross-examination, de bene esse, by Mr. Howson.*]

Cross-Q. 47. You have mentioned certain letters from Mr. Shettel which you say you didn't think it worth your while to examine to verify your recollection of dates; from this I understand that several letters passed between Mr. Shettel and you firm about the matter of this engine; is that the case?

A. Yes, sir; there had been some correspondence about it, and I think I could find the letters by search through a number of packages of letters that we have.

Cross-Q. 48. The press copy to which you refer in your examination-in-chief is a copy of your firm's answer to the first of Mr. Shettel's letters on the subject; isn't that so?

A. I believe it is.

Cross-Q. 49. Have you any recollection at all as to what period of time was covered by the entire correspondence between Mr. Shettel and yourselves on the subject of this engine?

A. I am not positive as to the length of time, but my impression is that it was but a few days after the date of the letter that I have a copy of—the letter of Nov. 17, 1877; I think that we got a reply or answer to this letter where he offers or suggests a trade on one of these electric clocks as part pay on the engine, and that I went to see him right after that.

Cross-Q. 50. As a matter of fact, when you came across this letter of Nov. 17, 1877, in your press copy book you didn't trouble yourself to look any farther either into Mr. Shettel's part or your own part of the correspondence; isn't that the fact?

A. Yes, sir.

Cross-Q. 51. Are we to understand you as testifying that, as a consequence of this correspondence, you made a special visit to Mr. Shettel at Shepherdstown, or did you visit Mr. Shettel while in his neighborhood on some other business?

A. It was a visit for that special business.

Cross-Q. 52. Did that visit and your visit to Mr. Drawbaugh's shop take place on one and the same day or cover more days than one?

A. It was on the same day.

Cross-Q. 53. Where did you and Mr. Shettel meet Mr. Grissinger that day?

A. In Mechanicsburg.

Cross-Q. 54. Then you first went to Shepherdstown and then you and Mr. Shettel went from Shepherdstown to Mechanicsburg; is that it?

A. I don't think that I met Mr. Shettel at Shepherdstown; my recollection is that he was at Mr. Grissinger's brother's place, near Mechanicsburg, and we all left from Mechanicsburg about the middle of the afternoon.

Cross-Q. 55. Had you left your home in Lancaster, to make your visit to Mr. Shettel, on the morning of that day or on a previous day?

A. In the morning of that day.

Cross-Q. 56. What time in the morning, and what time in the day did you reach Harrisburg?

A. The exact time I do not remember, but somewhere in the neighborhood of five o'clock.

Cross-Q. 57. Did you go immediately from Harrisburg to Mechanicsburg, or did you spend any time in Harrisburg?

A. My recollection is that I took the first train up the Cumberland Valley, and was at Mechanicsburg several hours before dinner, but just at what time the train run I am unable to say.

Cross-Q. 58. Did you get back to your home at Lancaster that same day or evening?

A. No, sir; we went back to Mechanicsburg; we took our supper at Mr. Grissinger's, and I stayed with him over night.

Cross-Q. 59. Whom, besides Mr. Grissinger, did you meet at his house on that occasion?

A. No one but his wife and mother-in-law that I can remember of.

Cross-Q. 60. Did you return to your home next morning or did you go elsewhere or stop anywhere on your way home?

A. My recollection is that I went home without stopping anywhere.

Cross Q. 61. When you went to Mechanicsburg did you go there for the purpose of meeting Mr. Shettel or for the purpose of seeing Mr. Grissinger?

A. I went there to see both of them; Mr. Grissinger was representing our machine as an agent there.

Cross-Q. 62. Where and with whom did you dine that day?

A. I think with Mr. Grissinger in Mechanicsburg; my recollection is that he met me at the train or I saw him when I got off of the train; I ain't positive about that.

Cross-Q. 63. Was it before or after dinner that you met Mr. Shettel?

A. That I couldn't say, but think we saw him soon after I met Mr. Grissinger.

Cross-Q. 64. You have given it as your recollection that you reached Mechanicsburg several hours before dinner time; where were you, and with whom, and what doing during that time?

A. I was with Mr. Grissinger in Mechanicsburg; we were talking about the steam engine and about the electric clock, and it was then he made arrangements to go down in the afternoon to see Mr. Drawbaugh.

Cross-Q. 65. Was all the time before dinner then spent at Mr. Grissinger's house?

A. No; I don't think that we were at his house before dinner; I remember of being in an implement store which, I think, Mr. Grissinger had some interest in.

Cross-Q. 66. Was it there you met Mr. Shettel; if not, where did you meet that gentleman?

A. That I do not recollect, but I met him before dinner or about the middle of the day some time.

Cross-Q. 67. Did Mr. Shettel dine with you that day?

A. I don't recollect.

Cross-Q. 68. Did you go to Mr. Drawbaugh's shop immediately after dinner or did you go somewhere else in the meanwhile?

A. We left Mechanicsburg some time in the afternoon, and my recollection is that we went to see an old portable engine that the Grissingers—I think Grissinger and Yost—owned; and from there we went to Drawbaugh's shop. My recollection is, that this engine was not far out of the direct road to the shop from Mechanicsburg.

Cross-Q. 69. In your direct examination you say that you mentioned to Drawbaugh that you had read an account of an experiment made with an apparatus for transmitting speech by the current of electricity; how long, according to your present recollection, before visiting Mr. Drawbaugh's place had you read that account?

A. My recollection is that it was quite a short time before that, as it was quite fresh in my mind.

Cross-Q. 70. Where was it that you had read that account—in what paper?

A. I am not positive about that, but I think it was in the *Scientific American* supplement.

Cross-Q. 71. Were you, while in business at Lancaster, an habitual reader of the *Scientific American*?

A. Not on general subjects, I was not; I have been a subscriber for a number of years.

Cross-Q. 72. In and since the year 1876?

A. Yes; in 1876 and one or two years since then.

Cross-Q. 73. Was the account which you had seen and clearly recollected at the time of your visit to Mr. Drawbaugh's, an account of some length or not, and was it illustrated or not, if you recollect?

A. My impression is that it was only a short account of some experiment, that had been made and telling what they had accomplished; I do not think there was any illustration of the instrument given.

Cross-Q. 74. Give us your best and fullest present recollection of the statement made in the short account which you tell us was fresh in your

mind when you made your visit to Mr. Drawbaugh's shop, as you have testified.

A. I would be unable to say just what they had done, but I remember distinctly that there were some great things predicted in the article; for instance, a man in New York speaking could be heard by an audience in San Francisco; I remember there was a statement of that kind in it.

Cross-Q. 75. You have told us that this article gave an account of experiments made; give us your best present recollection of the statements of the article in that regard.

A. My recollection is that it was a trial made of the instrument between two points a considerable distance from one another, and that they got it so that it could be heard distinctly, but I don't think that I had any idea, after reading the article, of the construction of the machine or instrument.

Cross-Q. 76. What names of persons or places do you remember, if any, in connection with the article?

A. I remember distinctly the name of Bell as the inventor, and I think it was in New York city, or between that city and some other point, that the trial was made.

Cross-Q. 77. You have mentioned two Messrs. Drawbaugh in your examination-in-chief; when, where, and how did you become acquainted with any Mr. Drawbaugh other than the one with whom you had the conversation as to which you have testified?

A. I got acquainted with one of the Drawbaughs that was in the lumber business, that had been at our works at Waynesboro' within the last two years, and I had gotten the names confused; I knew but one of the Drawbaughs at the time that I had been to see him, and only had reference to the one I knew at that time.

Cross-Q. 78. What business had the Mr. Drawbaugh who was in the lumber business at your works; upon what business did he visit them?

A. He came there for the purpose of buying an engine and sawmill.

Cross-Q. 79. Who was it notified you to attend here and give your testimony, and when?

A. About two months ago the same Mr. Drawbaugh was at the shop and asked me whether I would come to Harrisburg and say what I knew about his brother's telephone; I told him that I would rather not, as I did not think that what little I knew of it would mean any-

thing; he then said I was wanted here, and I told him I would come; I don't know whether that was his only business there or not; I met him in the office and he called me to one side when he spoke to me about it.

Re-direct by Mr. Hill:

Q. Q. 80. That was Henry F. Drawbaugh, of Newville, Cumberland county, was it not?

A. Henry, I think, was his name.

Q. Q. 81. Did you ever take dinner or stay over night at the house of Mr. Theodore Grissinger at any other time than the one you have mentioned?

A. I think not; I had been to see him several times when he lived out in the country, but that was in 1871, 1872, and 1873.

Q. Q. 82. Where was he living when you went with him down to Mr. Drawbaugh's shop?

A. At Mechanicsburg.

Q. Q. 83. In the village?

A. Yes, sir.

Q. Q. 84. Do you know in what part of the village or in whose house?

A. I think it was in the southern part of the village, but don't know in whose house.

Examination taken, reduced to writing, and by the witness affirmed and subscribed to before me, this 26th day of February, 1884.

FRED. M. OTT,
Examiner.

FRANK F. LANDIS.

Recess until 2, P. M.

JOHN S. FUNK, *being produced, affirmed, and examined, saith:*

Examined by Mr. Hill:

My age is 63; I reside at Marysville, Perry county, Pennsylvania; I am master mechanic of the Northern Central Railway shops at Marysville.

Q. 1. How long have you lived at Marysville?

A. About nineteen years.

Q. 2. Were you acquainted with George W. Kissinger, who formerly

resided on the farm of Thomas Draper just back of the village of Maysville?

A. Yes, sir.

Q. 3. Mr. Thomas W. Morley who was examined here in December last as a witness on behalf of defendants, testified among other things (see p. 571, def'ts sur-rebutting record) that there is a cemetery situated just east of the Draper farm near the edge of the village of Marysville, called the Chestnut Grove Cemetery, and owned by an association of individuals called the Chestnut Grove Cemetery Association; are you now or have you ever been a member of that association?

A. Yes, sir; I was one of the first members of it; I am president of the association now.

Q. 4. Mr. E. W. Wise has been the secretary of that association, as I am informed, and I judge from Mr. Morley's testimony that Mr. Wise has also been the superintendent of that association; am I right?

A. Yes, sir.

Q. 5. Do you know whether or not that association at one time contemplated putting in a hydraulic ram to force water from the run up to the cemetery?

A. Yes, sir; it did.

Q. 16. How long was that subject of putting in a hydraulic ram under consideration by the association?

A. I think, about one month.

Q. 7. Will you state the reasons that led the association to decline putting in a ram?

A. The reasons were, they came to the conclusion that they could not keep the boys from meddling with it—afraid that it would be tampered with or destroyed—so they dropped the subject.

Q. 8. Do you remember whether the subject of putting in a hydraulic ram to force water up to the cemetery came up for consideration at any meeting of the association?

A. Yes, sir; it came up at one meeting of the association.

Q. 9. Will you please look at this book which I have in my hand, and state what it is?

A. This is the minute book of the Chestnut Grove Cemetery Association.

[*Respondent's counsel states that he will refer to some of the entries in this book during the examination of this witness, and will hereafter formally offer the entries in evidence.*]

Q. 10. In an entry in this book bearing date Marysville, June 4, 1877, and purporting to be an entry of the proceedings of a meeting of stockholders of said association on that day, I find the following statement, to wit:

"The superintendent was instructed to measure the distance from the spring at the bridge near southeast corner of cemetary, also from stream on south at base of hill to centre of ground and make an estimate as to amt. of probable cost to have water conveyed into ground with a hydraulic ram, and report at manager's meeting in July."

I suppose that entry refers to the meeting at which you say the subject of putting in a hydraulic ram was discussed or considered; am I right about that?

[*Objected to as incompetent.*]

A. Right.

Q. 11. Was Mr. E. W. Wise the superintendent at that time who was referred to there in the minute which I have read?

A. Yes, sir.

Q. 12. At the time—June 4, 1877—when the subject of putting in a hydraulic ram for the purposes of the cemetery was discussed at the meeting of the association, was there or was there not any talk at the meeting about any hydraulic ram anywhere in operation?

[*Objected to as incompetent and inquiring for hearsay.*]

A. There was.

Q. 13. What hydraulic ram was talked about?

[*Objection continued.*]

A. One that Mr. George Kissinger had on the Draper farm.

Q. 14. What talk was there about Mr. George Kissinger's ram, at the meeting of the stockholders of your association of June 4, 1877, so far as you remember it?

[*Objection continued.*]

A. According to my memory, Mr. Kissinger had spoken to several of the stockholders about having a ram; Mr. Kissinger had a ram and he thought it would be a good thing for the association to force water up to the cemetery; that was what brought it before our meeting.

Q. 15. Was it the understanding at that meeting that Mr. Kissinger already had a hydraulic ram in at the Draper farm, or not?

[*Objected to as leading and incompetent.*]

A. It was our impression at the time; we understood such.

Q. 16. Was it the understanding at the meeting that Mr. Kissinger's ram had been recently put in, or that it had been put in some time before?

[*Objection continued.*]

A. We didn't know how long it had been in; I didn't hear any of the stockholders say how long.

Q. 17. A man named James Nesbit has been employed under you, I believe, at the railroad shops at Marysville?

A. Yes, sir.

Q. 18. Did Mr. Nesbit ever do any little job of repairing for Mr. Kissinger, to your knowledge?

A. Yes, sir; he done some repairs to that hydraulic ram of Mr. Kissinger's, on the Draper farm.

Q. 19. State, as near as you can, the time when Mr. Nesbit made those repairs for Mr. Kissinger.

A. Well, I can't say; I do not pretend to say what time it was; I have no charge whatever on my memory.

Q. 20. Are you able to say whether it was before or after the time of the railroad riots about the first of July, 1877?

[*Objected to as incompetent and as inquiring for mere guesswork, and also because the witness has already distinctly stated that he had no recollection whatever as to the time.*]

A. I think it was before the riots.

Q. 21. Where did Mr. Nesbit work while making the repairs—did he go out to the farm or do the work at the railroad shops?

A. He did the work at the railroad shops.

Q. 22. Who brought the parts down there to the shop to be repaired?

A. Mr. Joseph Kissinger.

Q. 23. Who gave Mr. Nesbit permission to do the work for Mr. Kissinger?

A. I gave him permission myself.

Q. 24. Did Mr. Kissinger, or Mr. Nesbit apply to you for such permission?

A. Mr. George Kissinger.

[*Deposition objected to as irrelevant, immaterial, and incompetent, and cross-examination declined by Mr. Howson.*]

Examination taken, reduced to writing, and by the witness affirmed and subscribed to before me, this 26th day of February, 1884.

FRED. M. OTT,
Examiner.

J. S. FUNK.

PETER KAFFENBERGER, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

My age is forty-five; I reside in Steelton, Dauphin county, Pa.; I am a shoemaker.

Q. 1. Where did you reside before you moved to Steelton?

A. I was a few months in Harrisburg.

Q. 2. And where did you reside before you moved to Harrisburg?

A. At Marysville, Perry county, Pa.

Q. 3. When did you begin to live at Marysville?

A. In 1872, the 5th of July.

Q. 4. Did you live in the village at that time?

A. Yes, sir; in 1872, in the village of Marysville.

Q. 5. Did you, at any time, purchase a piece of real estate in the borough of Marysville?

A. I bought a house.

Q. 6. Have you the deed of that house here?

A. I handed it over at the time I sold the property—or traded it; I handed it over to the purchaser.

Q. 7. Who did you trade that property with?

A. John Harrold.

Q. 8. What did you get for your house when you traded with Mr. Harrold?

A. I paid $500 to boot and the house for a piece of land in Rye township.

Q. 9. Have you got the deed here that Harrold made to you of that piece of land in Rye township?

A. Yes, sir.

Q. 10. Will you produce it in order that the examiner may certify its date upon the record?

A. Yes, sir; here it is.

[*Witness produces deed of John Harrold and Elizabeth, his wife, to Peter Kaffenberger, dated April* 1, 1874, *for a piece of land in Rye township, Perry county, Pa.*]

Q. 11. After you got that land in Rye township from Mr. Harrold did you go to live on it?

A. Yes, sir.

Q. 12. At what time did you go to live on that land?

A. In 1874; in April.

Q. 13. Did you ever have any talk with a man named Costley about his (Costley's) leasing the land from you or wanting to lease it from you?

[*Objected to as irrelevant and immaterial.*]

A. Yes, sir.

Q. 14. How near did he come to leasing it from you?

[*Objection continued.*]

A. He had leased it.

Q. 15. Did he take possession under his lease, and if not, why not?

A. He couldn't get bail or security for payment of rent and he didn't take possession?

Q. 16. Have you here the lease which was made from you to him, and if so will you produce it in order that the examiner may copy its date upon the record?

A. Yes, sir; here it is.

[*Witness produces lease from Peter Kaffenberger to Alexander Costley of a tract of land in Rye township, Perry county, Pa., dated the 25th of October*, 1878.]

Q. 17. Did you lease that land to anybody before you made this lease to Costley?

A. Yes, sir.

Q. 18. What was the man's name who leased it last before Costley?

A. Peter Shellenberger.

Q. 19. How long did Peter Shellenberger lease it before the lease was made to Costley?

A. One year.

Q 20. Then you leased it to Shellenberger some time in October, 1877, I suppose?

[*Deposition objected to as irrelevant, immaterial, and incompetent, and cross-examination declined by Mr. Howson.*]

Examination taken, reduced to writing, and by the witness affirmed and subscribed to before me, this 26th day of February, 1884.

FRED. M. OTT,
Examiner.

J. S. FUNK.

PETER KAFFENBERGER, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

My age is forty-five; I reside in Steelton, Dauphin county, Pa.; I am a shoemaker.

Q. 1. Where did you reside before you moved to Steelton?

A. I was a few months in Harrisburg.

Q. 2. And where did you reside before you moved to Harrisburg?

A. At Marysville, Perry county, Pa.

Q. 3. When did you begin to live at Marysville?

A. In 1872, the 5th of July.

Q. 4. Did you live in the village at that time?

A. Yes, sir; in 1872, in the village of Marysville.

Q. 5. Did you, at any time, purchase a piece of real estate in the borough of Marysville?

A. I bought a house.

Q. 6. Have you the deed of that house here?

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A. John Harrold.

Q. 8. What did you get for your house when you traded with Mr. Harrold?

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Q. 9. Have you got the deed here that Harrold made to you of that piece of land in Rye township?

A. Yes, sir.

Q. 10. Will you produce it in order that the examiner may certify its date upon the record?

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Q. 11. After you got that land in Rye township from Mr. Harrold did you go to live on it?

A. Yes, sir.

Q. 12. At what time did you go to live on that land?

A. In 1874; in April.

Q. 13. Did you ever have any talk with a man named Costley about his (Costley's) leasing the land from you or wanting to lease it from you?

[*Objected to as irrelevant and immaterial.*]

A. Yes, sir.

Q. 14. How near did he come to leasing it from you?

[*Objection continued.*]

A. He had leased it.

Q. 15. Did he take possession under his lease, and if not, why not?

A. He couldn't get bail or security for payment of rent and he didn't take possession?

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Q. 18. What was the man's name who leased it last before Costley?

A. Peter Shellenberger.

Q. 19. How long did Peter Shellenberger lease it before the lease was made to Costley?

A. One year.

Q 20. Then you leased it to Shellenberger some time in October, 1877, I suppose?

[*Objected to as leading and as not seeking the best evidence.*]

A. Yes, sir; in 1877; some time in the fall.

Q. 21. Did Mr. Shellenberger move on to the place about the time that he leased it?

A. Yes, sir.

Q. 22. How long did he stay on the place?

A. 'Till some time in March, 1878.

Q. 23. Why didn't he stay on any longer?

A. I sold him my stock and he promised to pay inside of so many months, and after he couldn't make it up I went and took it back again.

Q. 24. And did y u live on the place from March, 1878, to the date of Costley's lease?

A. Yes, sir.

Q. 25. From the time when you moved on to the place in April, 1874, until the time when you rented it to Shellenberger in the fall of 1877, did you live on the place yourself all the time?

A. Yes, sir.

Q. 26. How long did you live on the place after the fall of 1878?

A. I moved away two years ago last fall; I lived on the place all the time from the time I moved on to it in April, 1874, until the fall of 1881, with the exception of the few months that Shellenberger lived on it.

Q 27. How far was that place from the farm of Thomas Draper in the borough of Marysville?

A. About a mile.

Q. 28. Did you know George W. Kissinger, who formerly occupied the Draper farm?

A. Yes, sir.

Q. 29. Mr. Kissinger moved on to the Draper farm about the same time that you moved on to your farm in Rye township, did he not?

[*Objected to as leading.*]

A. Yes, sir.

Q. 30. After you bought your Rye township farm from Mr. Harrold was any discovery made on your land, and if so, what, and how came it to be made?

[*Objected to as immaterial and irrelevant.*]

A. I was digging a well and after we was down about five or six feet the old Welshman came along—an old miner—and he looked at it a

while and took some of it along, and went away and then came back again and asked me for a lease for some mining and fire-clay; he wanted to sink a shaft.

Q. 31. Do you remember his name?

A. Roberts.

Q. 32. Did you give him a lease as he wanted?

[*Objections continued.*]

A. Yes, sir.

Q. 33. Did he do any mining work under his lease; if so, what?

A. He took away about three quarters of a barrel of fire-clay.

Q. 34. Do you know what he did with it?

A. He sent it to Marietta, Pa.

Q. 35. Do you know whom he sent it to there?

A. A man by the name of Musser; I gave the lease to Musser and him together.

Q. 36. About what time was it that they took that lease and dug that fire-clay from your place?

[*Objection continued.*]

A. It was in the fall of 1875—the fall or winter—it was pretty cold already.

Q. 37. Did they dig the fire-clay from the well which you had started, or did they open a new hole in the ground?

A. They took from the ground that I had thrown out of that—the clay.

Q. 38. Were they going to sink their shaft at the well, or open a new shaft in case the enterprise would encourage it?

[*Objected to on the grounds previously taken; also as incompetent.*]

A. They stopped me from digging further; they wanted to use that as a shaft after they had tried the clay.

Q. 39. Where had you got water for your household purposes up to that time?

A. I had a large spring down in the hollow.

Q. 40. Did the finding of fire-clay in your well cause some little talk in the community; and bring people there to look at it?

[*Objections continued.*]

A. Yes, sir.

Q. 41. Did Mr. George Kissinger ever come up to look at it?

[*Same objections and as leading.*]

A. He was there one Sunday with a couple of men.

Q. 42. How long was he there with a couple of men after the fire-clay was discovered?

A. It was only a few weeks; I couldn't tell you just how long—not long afterwards.

Q. 43. Do you remember any conversation that you had with Mr. Kissinger while he was up there that day to look at the fire-clay?

A. Yes, sir.

Q. 44. Tell us about it.

A. I was saying, now they stopped me digging from my well, and it was too far to carry water from the spring, and he said the distance from the spring to the house was just the same as mine, and he was going to lay a pipe and fetch the water from the spring to the house with a ram, and I could do the same since they stopped me.

Q. 45. Did he say anything about where he was going to get his ram or whether he had got it or not?

[*Objected to as leading and improper mode of inquiry.*]

A. I asked him whether he had got a ram already and he said no, that he was to get it over there where he came from, and that he had not fetched it yet.

Q. 46. Over where, where he came from?

[*Objections continued.*]

A. Where he lived before he came to Marysville—Milltown, I think is the name.

Q. 47. How long did Roberts and Musser hold the control of your well under their arrangement with you?

A. They had it leased for twenty years and had to commence inside of nine months, and when they hadn't commenced for nine months the lease was worth nothing; they did nothing except take the three quarters of a barrel of clay that I mentioned.

Q. 48. And after their nine months ran out what did you do?

A. I went and finished the well; it was a little after that that I finished it.

Q. 49. When did you finish the well?

A. I finished it through the winter of 1876.

Q. 50. How did you raise the water from the well after you finished it?

A. I drawed a while first with a windlass and rope and then I got a force pump put in in the spring of 1877, about March.

Adjourned until February 27, 1884, at 10, A. M.

FEBRUARY 27, 1884, 10, A. M.

Examination resumed; present, same counsel.

Examination of Peter Kafferberger by Mr. Hill, continued:

Q. 51. Why did you not put in a hydraulic ram on your place to throw the water from your spring to your house, as Mr. Kissinger had suggested to you, instead of going on and completing the well in the fall and winter of 1876, and putting in a force pump in March, 1877?

[*Objected to as incompetent, irrelevant, and immaterial.*]

A. I went down and seen it and it didn't please me. The water came dropping out slowly into a barrel that was standing there, and I told him it wouldn't suit me; this was in the fall of the year.

Q. 52. Where did you see that water dropping slowly into the barrel?

A. At the hind part of Mr. Kissinger's house—Draper's house.

Q. 53. Did you go and look at it to see whether it would suit your purposes or not?

[*Objected to as leading.*]

A. Yes, sir.

Q. 54. I judge from your testimony that you did not like it because it did not discharge the water fast enough, or did not discharge enough water; am I correct in that understanding?

[*Same objection.*]

A. Yes, sir.

Q. 55. You say that it was in the fall of the year that you examined the water discharging from Mr. Kissinger's ram; in the fall of what year was it?

A. 1876.

Q. 56. About what time in the fall?

A. It had commenced getting cold already, I couldn't say just what day it was.

Q. 57. Then, after examining the water discharging from Mr. Kissinger's ram, did you go on and finish your well?

[*Objected to as leading.*]

A. Yes, sir.

Q. 58. While you and Mr. Roberts and Mr. Musser were still contemplating the mining of the fire-clay at your place, did any letters pass between you and any of those gentlemen with regard to that business?

A. Mr. Roberts got a good many, and I did, too.

Q. 59. Have you any letter here which you received at that time, and which related to that fire-clay business?

A. I have one yet that I could find.

Q. 60. If you have it here, will you please produce it?

A. I have it here; here it is.

[*Witness produces letter.*]

Q. 61. Did this letter which you have produced come to you through the mail?

[*Objected to as incompetent.*]

A. Yes, sir.

Q. 62. When did you receive it through the mail?

[*Same objection.*]

A. I received it in January, 1876.

Q. 63. In whose possession has it been ever since that time?

A. My own.

[*Respondents' counsel offers the letter in evidence as exhibit Musser-Kaffenberger letter, the original to be marked and filed with the exhibits in this case, and a copy to be made upon the record, at this point, by the examiner.*

Objected to by complainants' counsel as not proven and not evidence.

The letter is as follows:

"MARIETTA, LANCASTER CO., PA.,
January 8, 1876.

Mr. PETER KAFFENBERGER:

DEAR SIR: I received your letter to-day; was very much surprised in perusing its contents. I will now ask you for information, that I trust you will not fail to give me. It will be for your own good to do so. Is Mr. Roberts with you at present? What does he say he is staying for? He was here some time ago, and told me that the squire that we had to fix the lease, run off and took the papers with him; is this story correct? Mr. Roberts told me you would get the lease and send it to me. You may think it is none of my business, but I would like to know who the party is that would take hold of the clay if I don't. Did Roberts tell you about the party, or is it some one from your place? It will be for your interest to tell all to me. I will show you that I am right hereafter. When I left you, when last there, I told you to send

the clay, and I would find out as to its merits, that I would have the bricks made and burned. I have some made, but not yet burned; did not get the clay in time for the kiln that I spoke of. That is what I promised to do this winter. I said that there could be no use to do anything else till spring. I don't wonder that you do not want to bord Mr. Roberts, as he does you *no good* nor me neither. Now please answer the questions I have asked, and then I will give you information, that for the present I withhold. Say nothing to Mr. Roberts what this contains, and oblige your friend,

H. C. MUSSER."

P. S. Please answer as soon as possible.]

Q. 64. In this letter, dated Marietta, Lancaster Co., Pa., Jan. 8, 1876, and signed H. C. Musser, I read the following statement:

"When I left you when last there, I told you to send the clay and I would find out as to its merits, that I would have the bricks made and burned. I have some made but not yet burned; did not get the clay in time for the kiln that I spoke of. That is what I promised to do this winter; I said that there could be no use to do anything else till spring."

What clay was that that Mr. Musser referred to as having already got and made some bricks from, but not in time to burn in a particular kiln?

A. That clay got out of the well.

Q. 65. Do you mean that barrel or two thirds of a barrel of a clay that you and Mr. Roberts sent him?

A. Yes, that barrel that I sent him.

Cross-examined by Mr. Howson:

Cross-Q. 66. Whom did you see at Mr. Kissinger's when, as you have testified, you went there to see the ram?

A. Mr. Kissinger was there and his wife; and some of the girls were there; there were two girls there; he was out in the field doing some work and we came to the house and then I went right away home; I was working at Marysville at that time and passed his place going to and from work and I saw him working in the front field near the road, and he said his ram was now working and I could see it now, and he and I went over behind the house to look at the ram; I didn't go down to the spring; I didn't go into the house that time; I went from there right away home.

Cross-Q. 67. Then, as I now understand your story of the matter, you were going home from your work, and stopped to see the ram because you happened to see Mr. Kissinger, and he told you that he had it, and you could see it?

A. I passed on the road, and he said that his ram was now working and I could see it, and him and I went along in together to see it.

Cross-Q. 68. You were going home from your work at the time, were you?

A. Yes, sir.

Cross-Q. 69. And you say it was in the evening?

A. It was not dark; it was between light and dark; I generally got done between five and six o'clock—sometimes at five o'clock when I got done; I had a shop at Marysville.

Cross-Q. 70. Where did you buy, and who put in the force pump which you say you had put in to raise water from your well?

A. I bought it from Mr. William Shearer of Harrisburg.

Cross-Q. 71. Did he attend to the job of putting the pump in?

A. Yes, sir.

Cross-Q. 72. Had you a shop in Marysville up to the time when you moved away to Steelton?

A. I was a few months in Harrisburg and had a shoemaker's shop; I went down in December, 1876, and came back about the beginning of March, 1877. I rented a shop down at Vine street and River alley.

Cross-Q. 73. From whom did you rent that shop?

A. I rented it from Mr. Liesman; he was agent for some other man.

Cross-Q. 74. While you had this shop in Harrisburg, did you live on your property in Rye township?

A. Yes, sir.

Cross-Q. 75. Did you go to and from your work daily during that time?

A. No, sir.

Cross-Q. 76. After leaving this Harrisburg, shop did you have a shop in Marysville again?

A. Yes, sir.

Cross-Q. 77. Then you had a shoemaking shop in Marysville during the whole time that you lived in Rye township, excepting the few months that you had a shop in Harrisburg; is that it?

A. Yes, sir.

Cross-Q. 78. And during all those years, having your home in Rye township and your shop in Marysville, you would have occasion to pass Mr. Kissinger's place twice a day on almost every business day in the year; wouldn't you?

A. Yes, sir.

Cross-Q. 79. When you saw Mr. Kissinger at work in the field and he told you he had the ram, what work was he doing?

A. He was fixing around the fence there; he had a grubbing hoe.

Cross-Q. 80. Who, if any one, was working there with him at the time?

A. He was by himself.

Cross-Q. 81. He left his work and went up to the house with you, did he?

A. He took his grubbing hoe along and said it was getting dark, and went in; we went along together in.

Cross-Q. 82. Went together in where?

A. To see the ram—the water coming out.

Cross-Q. 83. Did you see the ram?

Q. I did not go down to the ram; I only saw the water dropping out of the spout into a barrel; that is all I seen that time.

Cross-Q. 84. What sort of a barrel was that—what size, and did it stand on the ground or was it sunk into the ground, or how?

A. I didn't examine much about the barrel; I only looked at it dropping in, and then I went away again.

Cross-Q. 85. When and by whom were you first spoken to about testifying in this case?

A. Mr. William Fenn of Marysville, last summer sometime—in the summer or fall some time; he came down to Steelton; it was in the summer; it was right warm at the time.

Cross-Q. 86. Who notified you to attend here to give your testimony, and when?

A. Ol Miller of Marysville, last Monday two weeks ago, or some time about two weeks ago.

Cross-Q. 87. Hadn't Mr. Miller, or some one else, been to talk with you on the subject before that?

A. Mr. Miller was not talking on the subject, but Mr. William Fenn last year yet, at the time he came to see me.

Cross-Q. 88. Did Mr. Fenn come to see you more than once, and, if so, how often?

A. He was down twice.

Cross-Q. 89. When was the last time?

A. This last fall some time.

Cross-Q. 90. Give us a little more particularly the time when you

stopped, as you have testified, to see the water coming out of the pipe at Mr. Kissinger's place—what time of the year it was and what month or about what month?

A. It was in 1876, so far as I can tell, after corn-cutting time.

Cross-Q. 91. About how long after corn-cutting time?

A. The corn was out in shocks.

Cross-Q. 92. Was there corn in the field at which you saw Mr. Kissinger at work?

A. Not in that field.

Cross-Q. 93. In what field was that and in what field do you recollect to have noticed corn in shocks at that time?

A. I couldn't just say in what field the corn was; the field I saw Mr. Kissinger at work in was the front field right at the road; there was a fence broke down that the cattle could go through, and he was fixing there.

Cross-Q. 94. How long were you using chain and windlass to raise the water from your well before you got the force pump?

A. I didn't use it myself any; the family drawed it out for a few weeks only; I did not come home at night—only Saturday night to stay over Sunday, the time that was.

Cross-Q. 95. Where did that chain and windlass come from, and what was done with it when you got the force pump?

A. It is in again; I tore the pump out and put the windlass in again. Mr. Bollinger and the men who was working at the well made it for me; the one that was used to draw the clay up while the well was being dug, I borrowed in Marysville, and I took it back again; when the windlass was put in the second time, I rebuilt it; I fixed it up myself; the pump didn't work well.

Cross-Q. 96. From whom did you borrow the windlass that you say had been used to draw the clay up, and did you use it for any other purpose than that?

A. I borrowed it from a man whose name, I think, was Jake Sang; it was up at Weaver's, at the upper end of Marysville, where they had been digging a well; it was an old windlass made out of plank; I didn't go for it; the boys went for it; we did not use it for any other purpose than in sinking the well.

Cross-Q. 97. You used that windlass to finish sinking the well, did you?

A. Yes, sir.

Cross-Q. 98. Was it before or after the sinking of the well was finished that Mr. Bollinger made a windlass for you?

A. Mr. Bollinger and Frank Rinehart and Restine dug the well together; Bollinger and Restine put a pump bed on, and built the windlass after the well was finished.

Cross Q. 99. When was it, according to your recollection, that the sinking of the well was begun again, after the idea of digging the fire-clay was given up?

A. I finished it through the winter of 1876, till the beginning of 1877.

Cross-Q. 100. I understand that you were at Mr. Kissinger's place at the time you have mentioned, only for a very few moments; I suppose you didn't have any talk with any one but Mr. Kissinger at that time?

A. I only bid Mrs. Kissinger the time, and asked her how she was getting along. She was out there doing something, and the girls were coming up from the barn after milking. I don't know whether it was milk or not; one had a bucket and they were coming up from the barn that way; and then I went away.

Cross-Q. 101. What was the first name of Mr. Bollinger, and where, if you know, does he live now?

A. His name was Joe Bollinger, he lived at that time right beside me—the adjoining place. He had a little farm. I couldn't really tell where he is working or living now. His wife and some of the children live up there at the same place yet, but he left his wife about two years ago. He went to Baltimore, and may be he is there yet. He was working at Steelton for a while—a couple of days.

Cross-Q. 102. Who were the people that visited your place with Mr. Kissinger when you say he came up to your place to see the fire-clay?

A. There was a good many there. Mr. Funk and Mr. Wise, and Al. Seidel were there. There were forty or fifty there that day. Some came through the woods, and Mr. Kissinger came over the hill by the old road.

Cross-Q. 103. Mr. Kissinger came there alone, did he?

A. I think he came alone; there were a good many there; he came into the house and stood awhile; others just came and looked at the well and then walked off; Mr. Funk and Mr. Wise and Al Seidel were a while in the house too—not long—just a few minutes.

Cross-Q. 104. Were they in the house at the same time with, or before or after, Mr. Kissinger?

A. I am not positive any more; I think I called him in and he came and was in a while with the others, but not long; he was in longer than the other ones; I couldn't tell any more.

Cross-Q. 105. Who was present when you and he were talking about carrying the water to the house?

A. My family was there and I am not positive whether Mr. Funk and Mr. Wise were there or not when he commenced on it.

Re-direct by Mr. Hill:

Q. Q. 106. Where is Mr. William Shearer living now?

A. He lives on the high land below Steelton.

Q. Q. 107. Did you pay Mr. Shearer for the pump at the time that you bought it or not till afterwards; and please explain how you paid for the pump?

A. I paid him some; and ten dollars was to stand till the pump worked right; I paid the ten dollars to Mr. Wiesman; he had bailed him or something, and had an order from Mr. Shearer and I paid it to him.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 27th day of February, 1884.

FRED. M. OTT,
Examiner.

PETER KAFFENBERGER.

Recess until 2, P. M.

ELI W. WISE, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

My age is 55; residence Marysville, Perry county, Pennsylvania; I am in the mercantile business.

Q. 1. How long have you resided and kept store at Marysville?

A. Thirteen years.

Q. 2. Did you know Mr. George W. Kissinger who, from April 1st, 1874, to April 1st, 1880, occupied the Draper farm, right back of the village of Marysville?

A. Yes, sir; I did.

Q. 3. It has appeared in evidence here that there is a cemetery at the back edge of the village of Marysville, called the Chestnut Grove Cemetery, and owned by an association of individuals styling themselves

the Chestnut Grove Cemetery Association—are you, and if so, how long have you been a member of that association?

A. (Witness refers to book.) I guess I will answer that by saying from the 26th day of June, 1872; that is the date of incorporation but I was a member before it was incorporated—one of the original charter members, and I have been a member ever since.

Q. 4. Who is now the secretary of the association?

A. I am.

Q. 5. How long have you been secretary of the association?

A. Since the organization.

Q. 6. When was the association organized?

A. June 26, 1872.

Q. 7. And when incorporated?

A. I can't give you the date of the month, but I can give you the month—it was in July, 1872.

Q. 8. Have you here the minute book containing the minutes of the meetings of the association?

A. I have.

Q. 9. Will you please produce it and allow the examiner to copy such extracts from it as he may be directed to copy?

A. I will; I have it here.

[*Witness produces book.*]

Q. 10. Are these entries in the book all in your handwriting?

A. All entries from and after July 15, 1872, are in my handwriting. The entries before that time are in the handwriting of my son, who made them by my direction.

Q. 11. When were these several entries that appear in the book made?

A. At meetings of the managers and of the stockholders.

[*Repondents' counsel requests the examiner to copy upon the record at this point, the minutes of the 5th annual meeting, dated Marysville, June* 4, 1877, *which the examiner copies as follows:*

"Fifth Annual Meeting,

Marysville, June 4, 1877,

Meeting of stockholders and officers met to transact the business of the association.

Meeting was called to order by the President. Members present Funk, Brabson, Dice, Swartz and Wise, Minutes of last meeting was read and adopted,

Superintendents' report,

Whole number of lots sold during—
Five at 15.00 ea
one " 25.00 "
two " 10.00 "

Expenditures during the year,

Mowing cemetery	3,00
Hauling clay	7 83
oil to burn stump	37
Labor	8,61
Writing deeds	1 50
Salt, brushes, etc	88
Dice, Bill, whitewashing fence	15,00
Hauling stone	1,50
lime & frt bill	2,44
tallow, bbl, frt, on trees	1,96
Expenses of incorporating	4,00
Miscelaneous bills	61

Due association from all sources,

Bal due Mrs C. E. Rhiver	15,97
" L. W. Brabson	12,97
" J. Morthland	10.00
" C. Glosser	20.00
" Mrs. M. Stahler	5,00
" H. H. Fisher (Thompson)	10.00
" D. Benfer	5,00
" Jno. F. Gushaw	15,00
	93,94

I submit the foregoing as my fifth annual report as superintendent of C G. Cemetery,

The superintendent, E. W. Wise, tendered his resignation, which was laid on the table,

Nomination of officers; a motion was made to postpone the election of officers indefinitely.

New Business.

At a previous meeting a motion carried to have a new deed issued to Jas. Nesbit, to replace one given him. A motion was now made to rescind the former motion, having inquired into the legality of said *Deed* and find it legally gotten up. The superintendent was instructed to measure the distance from spring at the bridge near south east corner of Cemetery, also from stream on south at *base of hill* to centre of ground and make an estimate of the amount of probable cost to have the water conveyed into ground with an *Hydraulic Ram* and report at manager's meeting in July. No more business. Meeting adjourned to meet as above mentioned. Adopted.

E. W. WISE, *Sec.*]

Q. 12. When was this minute, which purports to be a minute of the fifth annual meeting, and is dated Marysville, June 4, 1877, entered in the book?

A. I presume on the morning of the 5th of June, 1877, as I was usually in the habit of writing them the next morning. I didn't have time in the evenings as we were usually pretty late.

Q. 13. Referring to the minute of that meeting of June 4, 1877, I find in it that the superintendent was instructed to measure certain distances therein stated, and to make an estimate of the amount of probable cost of having water conveyed into the grounds with a hydraulic ram, and to report at the manager's meeting in July, who was the superintendent that was instructed so to do?

A. I was.

Q. 14. As you were the secretary who made the minute, I suppose you were present at the meeting of June 4, 1877, were you?

A. I was.

Q. 15. Will you tell us what caused the subject of procuring a hydraulic ram to convey water to the cemetery grounds to come up for discussion and action at that meeting?

A. It was owing to a hydraulic ram having been placed on the farm of Mr. Draper to force water from his spring to his residence, or house, rather, as he was not residing in it His farm adjoined the cemetery on the west.

Q. 16. At the time of that meeting of the association on June 4, 1877, what, if any, personal knowledge had you in regard to Mr. Draer's hydraulic ram?

A. Having been up to see it, some time prior to that, in the spring of the same year; I couldn't just fix the date.

Q. 17. When you were up to see it prior to that meeting of October 4, 1877, did you see the ram at Mr. Draper's place?

A. I did, sir.

Q. 18. Was it in operation when you saw it at that time or had it been in operation?

A. It was in operation.

Q. 19. By the vote of the association at that meeting of June 4, 1877, you, as superintendent of the cemetery, were instructed to estimate the cost of having a ram put in for cemetery purposes, and to report at the manager's meeting in July; what steps, if any, did you take to discharge the duty thus imposed upon you?

A. I measured the distances and had the gentleman (Mr. Daniel Drawbaugh) to give me the cost of the same.

Q. 20. Did Mr. Drawbaugh visit the cemetery and examine the premises with you?

A. He did.

Q. 21. About what time?

A. Some time in July of the same year, as near as I can recollect.

Q. 22. Did you get Mr. Drawbaugh to come up from Milltown for that purpose?

A. I did not.

Q. 23. How happened he to be up at Marysville at the time when he visited the cemetery with you?

A. He having some business with George W. Kissinger, who lived on the Draper farm, in a financial way, called to see me and handed me a bill against the said Kissinger, and asked me to collect it for him, if possible.

Q. 24. Do you remember what that bill was for?—I mean what the charges were for, not the amount.

A. For constructing or putting in a hydraulic ram was what it was for.

Q. 25. Do you recollect what the amount of the bill was?

[*Objected to as asking for secondary evidence.*]

A. I think $19.80.

Q. 26. Did you try to collect the bill from Mr. Kissinger; and, if so, with what result?

A. I failed to collect it; I tried to collect it but failed.

Q. 27. Do you know what became of the bill?

A. I believe I gave it to Mr. Drawbaugh again.

Q. 28. Have you searched among your papers for it within the last year?

A. I did; I was not able to find it.

Cross-examined by Mr. Storrow:

Cross-Q. 29. Is there anything else in the record book which you have produced referring to a hydraulic ram, except the extract which has been put in evidence?

A. Nothing else relating to that, sir.

Cross-Q. 30. Do you remember that Mr. Storrow came to see you a

year or so ago and asked you about a bill for a ram against Mr. Kissinger which Mr. Drawbaugh left with you for collection?

A. I do remember.

Cross-Q. 31. Do you remember that Mr. Storrow asked you whether you were to collect the money and apply it to any debt that Mr. Drawbaugh owed you, if you collected it?

A. I do not remember that he asked me that question.

Cross-Q. 32. You told Mr. Storrow on that visit that, at the time the bill was left with you, Mr. Drawbaugh owed you nothing, but had paid you all he owed you, did you not?

A. I suppose he had paid me all he owed me up to that date. I don't remember what answer I gave Mr. Storrow to that particular question. If Mr. Drawbaugh owed me anything at that time, he owed it on a note which wasn't due at that time of year. If you owe me a hundred dollars and give me a note, you don't owe the money until the note is due. In one sense you owe it, and in another sense you don't.

Cross-Q. 33. Didn't you tell Mr. Storrow that Mr. Drawbaugh owed you nothing, but had paid you in full?

[*Objected to as immaterial and incompetent.*]

A. I don't recollect whether I told Mr. Storrow that or not. I don't remember if Mr. Drawbaugh had owed me. I wouldn't have taken such a thing as that in part payment. I didn't need to peddle that way.

Cross-Q. 34. Mr. Storrow has seen you again within a week on the subject, has he not?

A. He has.

Cross-Q. 35. And at that last interview, you told Mr. Storrow that at the time the Kissinger bill was left with you for collection Mr. Drawbaugh owed you nothing, but had paid his debt in full, did you not?

[*Same objection, and the statements of complainants' counsel in questions* 32, 33, *and* 35, *are objected to as not evidence.*]

A. There was nothing said about that the evening Mr. Storrow called on me; he simply called in to see whether I had found the bill; there was nothing said about owing or anything else; the subject was up but nothing said about the matter of Mr. Drawbaugh owing me.

[*After the answer down to and including the words "anything else" was read to witness, he asked that the words "anything else" be omitted.*

Mr. Storrow objected, and witness then gave the remainder of the answer.]

Cross-Q. 36. Mr. Storrow at that last visit first asked you whether you had found the bill, and then asked you what took place when you presented it to Mr. Kissinger, did he not?

[*Same objections as to last interrogatory.*]

A. He did not.

Cross-Q. 37. You then recognized Mr. Storrow as the gentleman who was to see you before, and he then said to you that on the previous visit you had told him the bill was left with you after Mr. Drawbaugh had paid off all his debt; and he asked you whether that was not the fact; is not that so?

[*Same objections.*]

A. No such conversation took place between us.

Cross-Q. 39. At this same last interview you told Mr. Storrow that when you presented the bill to Mr. Kissinger he said that Mr. Drawbaugh owed him that amount of money and that they would settle it between themselves; is not that the fact?

[*Same objection, and all the cross-examination relative to Mr. Storrow's interviews and conversations with the witness further objected to as new matter not inquired of in the examination-in-chief.*]

A. I have no recollection of such conversation.

Cross-Q. 39. You then told Mr. Storrow that you returned the bill to Mr. Drawbaugh and reported to him that Mr. Kissinger said that Drawbaugh owed him about that amouut of money, and that Drawbaugh replied that he thought he didn't and should see Kissinger about it; is not that the fact?

[*Same objections.*]

A. No conversation of that sort at the last interview.

Cross-Q. 40. When you presented the bill to Mr. Kissinger, what did he reply to you?

A. I believe that question has been answered.

Cross-Q. 41. Will you please answer it again?

A. I presume it is on record there; he answered stating that Mr. Drawbaugh owed him $18 00, or thereabouts, and that they would fix it some time themselves.

Cross-Q. 42. What did Mr. Drawbaugh say when you came back with the bill to him, and what did you say to him?

A. I told him I could not collect the bill; that that was the result of

the interview; Drawbaugh said he didn't think he owed him anything.

Cross-Q. 43. When Drawbaugh left the bill with you for collection, what did you intend to do with the money if you did collect it?

[*Objected to as immaterial and incompetent.*]

A. Issue a check for the amount and send it to him.

Cross-Q. 44. How do you know that Mr. Drawbaugh went to Mr. Kissinger's on business at the time he left the bill with you?

A. Because he told me so, and the fact of him having the bill with him and giving it to me afterwards.

Cross-Q. 45. Did he drive up there, or how did he get up there?

A. He walked.

Cross-Q. 46. Did he tell you that he had walked all the way up from Milltown and was going to walk back?

A. I didn't mean that he walked all the way from Milltown; I had reference to his walking from Marysville up to the farm and back.

Cross-Q. 47. Did you see him more than once that day?

A. I did.

Cross-Q. 48. How did you come to see him twice?

A. He called in in a friendly way on his way to Mr. Kissinger's and on his return called in again because I had requested him so to do.

Cross-Q. 49. Why had you so asked him?

A. Because I wished to show him the location of the ground and so forth, for having a hydraulic ram put in to throw water to the cemetery.

Cross-Q. 50. Did you go up to the cemetery with him?

A. I did.

Cross-Q. 51. Was that after the second time he came to your store that day?

A. Yes, sir; after the second time.

Cross-Q. 52. Why didn't you go up with him the first time?

A. It didn't suit me to go.

Cross-Q. 53. Did he spend pretty much the whole day up there at Marysville?

A. I do not know.

Cross-Q. 54. What time of day did he first come to you?

A. About mid-day; I don't remember the hour.

Cross-Q. 55. How long were you together at the cemetery?

A. About an hour and a half from the time we left the store until we returned.

Cross-Q. 56. What passed between you on the subject of the ram for the cemetery?

A. There were many things that passed between us that I can't recall to-day, but if you wish to know the cost, or his idea of the location, I can give it to you.

Cross-Q. 57. State all you remember that passed between you about it that day.

A. I asked him the question what the probable cost was of putting the water to a point which was designated. He replied, for setting ram and attaching pipes without digging trench, and building dam for driving said ram—

Adjourned until February 28, 1884, at 10, A. M.

February 28, 1884, 10.30 A. M.

Examination resumed pursuant to adjournment. Present, same counsel.

Cross-examination of Eli W. Wise by Mr. Howson continued:

—would be about forty dollars, and if we so desired, he would put one in and guarantee it to throw the water to the place designated, provided it would be placed at the point shown.

Cross-Q. 58. Did you report that to the cemetery association?

A. I did, but not at a meeting—merely verbally to the managers.

Cross-Q. 59. To which of the managers did you make this verbal report—to all of them, or to each of them at different times?

A. To all of them at different times just as I would happen to meet them; they didn't attend the meeting and of course I had to do it just as I happened to meet them.

Cross-Q. 60. Was any further action taken in the matter by the managers, or the association, or yourself; and if yes, what?

A. No further action.

Cross-Q. 61. Give us a little more particularly your recollection of the time at which, as you say, you were up at the Draper farm to see the ram.

A. About the beginning of May, 1877.

Cross-Q. 62. You went there for the particular purpose of seeing the ram, or were you there on some other business also?

A. Merely taking a walk and stopped there.

Cross-Q. 63. What day of the week was it then—and, who if any one was with you?

A. It was on a Sabbath morn; and O. H. Miller was with me.

Cross-Q. 64. Where had you and Mr. O. H. Miller met that morning?

A. I couldn't answer that.

Cross-Q. 65. You say that you and he were merely on a walk and stopped there; where did you walk to that day?

A. To George W. Kissinger's and returned.

Cross-Q. 66. Did you and Mr. Miller walk up to Mr. Kissinger's for any particular purpose; and if yes, for what purpose?

A. For the sake of the walk.

Cross-Q. 67. Where did you go, and where, if you know, did Mr. Miller go when you returned from Mr. Kissinger's?

A. I am very sure I went home; I don't know what became of him; I presume he went home also.

Cross-Q. 68. Whom did you see and talk with on the Kissinger place that day, if any one?

A. None others than the Kissinger family, I believe; there may have been some one else there.

Cross-Q. 69. Will you name the members of the Kissinger family whom you distinctly remember meeting on that occasion?

A. Mr. and Mrs. Kissinger and one of the sons is my recollection.

Cross-Q. 70. Which one of the sons?

A. I do not know the names and couldn't answer.

Cross-Q. 71. Were you in the house that day, and if so, how long were you there?

A. I was not in the house.

Cross-Q. 72. Where was it that you met Mr. and Mrs. Kissinger and the son?

A. Mr. Kissinger was sitting at the north side of the house, and Mrs. Kissinger and the son came out of the house after we had been there a short time.

Cross-Q. 73. Did both you and Mr. Miller look at the ram that day?

A. I do not remember whether he accompanied me down the hill to see it or not?

Cross-Q. 74. You are quite clear, then, that you went down the hill to see it, and did see it?

A. Yes, sir.

Cross-Q. 75. And saw it working, and it appeared to you to work satisfactorily?

A. Yes, sir.

Cross-Q. 76. Who accompanied you down the hill to see the ram?

A. I believe it to have been Mr. Kissinger.

Cross-Q. 77. As a matter of fact, do you recollect whether somebody else went down there with you, or whether you went down there by yourself?

A. I am positive I was not alone.

Cross-Q. 78. When you got down the hill, the ram was there in open sight, was it?

A. It was not.

Cross-Q. 79. How was it covered?

A. It was boxed over with boards or plank; I do not remember which.

Cross-Q. 80. Was it a flat cover of boards or planks or a raised cover?

A. In the form of a box.

Cross-Q. 81. How high was this box and what shape?

A. I cannot give you the length or breadth, but about two feet high, I think.

Cross-Q. 82. And the shape?

A. Square.

Cross-Q. 83. You removed this cover, did you?

A. I lifted it sufficient to see the ram, certainly.

Cross-Q. 84. You very clearly recollect lifting that cover off yourself, do you?

A. I do.

Cross-Q. 85. What sort of a place was it that the ram was placed on or in?

A. Not having examined the location of the foundation, I cannot answer.

Cross-Q. 86. Do you mean to say that you have no recollection as to how the ram was placed with reference to the level of the ground or in what sort of a place it was housed?

[*Question objected to as obscure.*]

A. The base of the ram was possibly a foot and a half below the level of the ground—or the top of the ground; the ground not being quite level.

Cross-Q. 87. How high, according to your recollection, was the ram itself?

A. Eighteen or twenty inches.

Cross-Q. 88. So that the top of the ram was within a few inches of the top of the ground?

A. It would be within a few inches, I presume, of the top of the level of the ground.

Cross-Q. 89. What was the shape and size, according to your recollection, of the hole or hollow in which this ram was situated?

A. It was in the shape of a trench dug along the ground.

Cross-Q. 90. What was the width of this trench and what space was there between the ram and the edges of the trench?

A. I do not know the width of the trench nor the space between.

Cross-Q. 91. You say you don't know the width of the trench; have you any recollection as to the length of it?

A. I do not know the length of it.

Cross-Q. 92. Was the ram walled in with wood or stone, or any other kind of a wall, according to your recollection?

A. I believe with stone—very ruggedly.

Cross-Q. 93. What is your recollection as to the area of this stone work—how much there was of it?

A. I cannot give the extent of it.

Cross-Q. 94. How lately have you been on the Draper farm?

A. I believe I was on the Draper farm in the summer of 1880.

Cross-Q. 95. After you had examined the ram and seen it in what seemed to you satisfactory operation, where did you go from the ram?

A. Up the hill, out to the road, and home.

Cross-Q. 96. Did you go to and return from the Draper farm by the same road that day?

A. I did.

Cross-Q. 97. I suppose you took particular notice of what sort of a stream the ram appeared to deliver?

A. The particular part I can omit; as to the size of the stream it was less than half inch, I believe.

Cross-Q. 98. Into what was this stream delivered at the time you were there?

A. Into a trough.

Cross-Q. 99. What was this trough made of—how long, how high, and on what was it supported, and of what shape was it?

A. I cannot answer, not knowing the size, length, or width of it.

Cross-Q. 100. You have told us very positively it was a trough. I wish you would describe this trough as you recollect it.

A. I believe it to have been a trough just from present recollection; as to the size I do not know.

Cross-Q. 101. As a matter of fact, have you any recollection, at the present time, as to what sort of a vessel it was; and if yes, give us your recollection as to what sort of a vessel it was and of what capacity?

[*Objected to as immaterial and as already fully answered.*]

A. I believe it to have been a trough; the capacity I do not know.

Cross-Q. 102. Do you know Mr. George W. Kissinger's son, Cyrus?

[*Objected to as immaterial and irrelevant.*]

A. I know Mr. Kissinger's son, but as to the Cyrus part I do not, because I never knew one from the other.

Cross-Q. 103. About what was the age, according to your present recollection, of the son whom you say you met on the day of your visit when you made the examination of the ram?

[*Objected to as calling for mere guesswork.*]

A. Having no acquaintance with them, I don't know anything about their ages.

Cross-Q. 104. Was the son you saw a man, or a young lad?

A. A young man.

Cross-Q. 105. You had a talk with Mr. Kisssinger about the ram that day?

A. Only passing remarks.

Cross-Q. 106. Did you visit the spring?

A. No, sir.

Cross-Q. 107. I suppose you talked with Mr. Miller, as you and he were walking back, about the ram and what you had noticed?

A. I do not think I did.

Cross-Q. 108. You had nothing to say to him, nor he to you, about it?

A. No, sir.

Cross-Q. 109. I understand you to testify that it was after and in consequence of this visit of yours to see the ram that you recommended the cemetery association to get one; is my understanding correct?

A. Not necessarily so, from the fact that I knew of hydraulic rams long prior to that date.

Cross-Q. 110. I am not seeking to argue the point, but to inquire whether, as a matter of fact, it was after and in consequence of your visit to the Draper farm and examination of the ram that you recommended the cemetery association to get one?

A. The subject was brought up at an annual meeting of the Chestnut Grove Cemetery Association after that time.

[*Answer objected to by Mr. Howson as evasive and question repeated.*]

A. It was not in consequence of the visit.

Cross-Q. 111. How long before the meeting of June 4, 1877, had you suggested to the Cemetery Association or any of its managers or members the idea of getting a hydraulic ram for use in the cemetery?

A. Several years prior to that.

Cross-Q. 112. And you repeated the suggestion in conversation with different members from time to time up to June 4, 1877; is that the case?

A. It is.

Cross-Q. 113. In your answer to cross-interrogatory 32 you say (referring to the time when Mr. Drawbaugh left with you for collection from Mr. Kissinger a certain bill) "I suppose he," (meaning Mr. Drawbaugh,) "had paid me all he owed me up to that date." Do you now testify, as a matter of fact, that that was the case; that at the time Mr. Drawbaugh left the bill in question with you for collection he owed you nothing?

A. I reiterate the same answer as I made to cross-question 32. If I held notes against him they were entered up as purchase money of a house and he owed them when due.

[*Answer objected to by Mr. Howson as evasive and argumentative, and question repeated.*

Question objected to by Mr. Hill as immaterial and irrelevant, as inquiring for matter not referred to in the examination-in-chief, and about which the witness has already substantially stated his inability to answer from memory any more definitely than he has done.

Witness continues:]

I do not remember the amount, but I held judgment note or notes which were paid me in the spring of 1879, I believe, and the bill left in my care or charge had nothing to do with the amount of said notes. I took charge of the said bill as a friendly act to try to collect it.

[*Answer objected to by Mr. Howson as irresponsive and volunteered.*

The present course of cross-examination objected to by Mr. Hill as a

mere attempt to quibble and to badger and hector the witness, from whose testimony it already appears that Mr. Drawbaugh put this bill in his hands in July, 1877, and that the judgment note or notes which the witness had held against Mr. Drawbaugh before that time, was or were not paid till the spring of 1879, nearly two years after Mr. Drawbaugh put the Kissinger bill in witness's hands for collection; whence it appears that there is no materiality or responsableness in the question now insisted upon; and further, the entire line of the cross-examination as to what Mr. Drawbaugh did or did not owe the witness at the time the Kissinger bill was handed to the witness for collection, is objected to as irrelevant, immaterial, and new matter not referred to in the examination-in-chief.

Objection objected to by Mr. Howson as an unwarranted prompting of the witness, and interference with the rights of the cross-examiner.

Mr. Hill denies that the question prompts the witness in any way whatever, and insists that the cross-examination shall cease from a mere waste of time and quibbling upon words, and proceed to something material and pertinent to the case.]

Cross-Q. 114. I quote further from your answer to cross-question 32: "If Mr. Drawbaugh owed me anything at that time he owed it on a note which was not due at that time of year; if you owe me a hundred dollars and give me a note, you don't owe the money until the note is due." I now ask you whether you testify that, as matter of fact, at the time Mr. Drawbaugh left the bill with you for collection he did not owe you any money which had fallen due before that time?

[*Same objection.*]

A. Have I not answered that question?

Cross-Q. 115. As yes or no will answer it, please do so now.

[*Mr. Hill objects as before; and also objects to cross-examining counsel dictating the form of the answer.*]

A. I do not remember the date of the note or notes and consequently cannot say.

Cross-Q. 116. Then you now wish to be understood, do you, as saying that when you conversed with Mr. Storrow on the two occasions referred to in your cross-examination, and also yesterday when you answered cross 32, you did not, as matter of fact, recollect whether, when Mr. Drawbaugh gave you this bill for collection, there was any overdue money owing by Mr. Drawbaugh to you or not; is that it?

[*Same objections.*]

A. I cannot say whether I recollected at that particular time or not, because I did not need the money badly.

Cross-Q. 117. And I suppose you don't know now whether you recollected or not yesterday afternoon; is that it?

[*Same objection.*]

A. I have no answer to make to that question.

Cross-Q. 118. Mr. Daniel Drawbaugh has testified to having bought a property in Mechanicsburg from one Mr. E. W. Wise, a transaction which he says was completed on or about the first of April, 1876, (see pp. 890 and 891 deft's printed record,) you are that Mr. Wise, are you not?

[*Objected to as new matter not inquired of in examination-in-chief.*]

A. I am that E. W. Wise; yes, sir.

Cross-Q. 119. Mr. Drawbaugh further testified that he gave three judgment notes in part payment for his property; those were the notes, were they not, which you have several times referred to in your examination here, and which you say were paid in the spring of 1879, you believe?

[*Same objection.*]

A. They were.

Cross-Q. 120. I suppose you have a very clear and independent recollection that the sale and purchase of that property was in April, 1876, as Mr. Drawbaugh has testified.

[*Same objections.*]

A. I have not.

Cross-Q. 121. Then you would not have recollected of yourself, would you, the year or month of the year of that transaction?

[*Same objection and further objected to as immaterial.*]

A. No, sir.

Cross-Q. 122. Is your memory equally bad as to the number of the notes, the amounts of them and the times at which they were payable?

A. I believe they were three; the transaction was consummated by my deceased brother; had it been with myself I would have remembered it.

Cross-Q. 123. You recollect, don't you, that these notes were payble respectively in one, two, and three years?

[*Same objections and respondents' counsel calls the attention of the court to this persistent waste of time on matters having no connection whatever with the examination-in-chief of this witness, nor with the facts established by such examination.*]

A. I believe them to be payable at those stipulated times—one, two, and three years.

Cross-Q. 124. You recollect, don't you, that when the first of them became due it was not fully paid, but that a balance of forty-six dollars, or thereabouts, together with some interest, was left unpaid until a year after?

[*Same objections.*]

A. I don't recollect.

Cross-Q. 125. Do you wish us to understand that you have entirely forgotten that?

[*Same objections.*]

A. I have forgotten it, certainly.

Recess until 2.30, P. M.

Cross-Q. 126. Is your recollection any clearer as to the second and third payments—whether they were made when due or discharged fully when due?

[*Same objection.*]

A. I do not remember.

Cross-Q. 127. Then you wish to be understood as testifying that as regards a business transaction concerning yourself and occurring as recently as 1876, you have, at this time, no independent personal recollection either of the year of the transaction, or of the circumstances attending the payment of moneys coming to you from the transaction?

[*Same objections.*]

A. Only so far as my memory being refreshed by seeing papers connected with that transaction; otherwise, it is indistinct so far as the date is concerned.

Cross-Q. 128. What papers have you seen to refresh your memory by, and when?

[*Same objection.*]

A. The remains of a note.

Cross-Q. 129. What did you learn from that note or remains of a note?

[*Same objection.*]

A. Nothing more than the year in which the transaction took place; that is all.

Cross-Q. 130. Was there a date on that note or remains of a note; and if yes, what day?

[*Same objection.*]

A. I believe it was drawn in 1876.

Cross-Q. 131. When was it you consulted that remains of a note?

[*Same objection.*]

A. The 27th day of February, 1884.

Cross-Q. 132. That being yesterday, please give us your recollection as to the date you read on that remains of a note, if any.

[*Same objection.*]

A. I don't remember the month nor the day of the month.

Cross-Q. 133. Do you remember that there was some month and day on that remains of a note?

[*Same objection.*]

A. I presume that there was, as notes are not usually given without month and date.

Cross-Q. 134. I don't ask for argument or presumption, but for fact; I wish to know whether you observed yesterday some month and some day on that remains of a note?

[*Same objection.*]

A. I did not, sir.

Cross-Q. 135. Then your present recollection is that there was no month nor no day mentioned on that particular paper; is that it?

[*Same objection.*]

A. I presume there was a date, but I do not remember it.

Cross-Q. 136. You stated in your answer to cross-question 132 that you did not remember the month nor the day of the month; in your answer to cross-question 134, you say you didn't observe any month or day on the paper; in your last answer you say you presume there was a date but you don't remember it; are we to understand from these various statements that you did not notice what the month or the day of the

month was, or that having noticed them yesterday, you do not now remember them?

[*Same objections, and as this line of cross-examination is no part of the respondents' case, but a matter on which the complainants make the witness their own by cross-examining outside of the scope of the examination-in-chief, respondents' counsel further objects, after the complainants' counsel have drawn out from the witness the statement that he did not observe any day or month on the note, to their trying to worm out of him some change in the form of expression which they apparently think might be more favorable to their proposed inferences.*]

A. I want you to understand that I do not remember them; I may have noticed them or I may not have; I don't remember; it was a matter of no importance to me when I was looking at it, for I wasn't looking for that purpose.

Cross-Q. 137. For what purpose do you mean in your last answer, and what time yesterday was it that you looked at the note in question?

[*Same objection.*]

A. Wednesday, the 27th day of February, 1884, in the forenoon; I saw said note in the hands of Mr. M. W. Jacobs; he asked me whether I recognized that note and I said I did.

Cross-Q. 138. Was that one of the notes connected with the business of the Mechanicsburg property?

[*Same objections.*]

A. It was.

Cross-Q. 139. When and by whom were you first spoken to as to your recollection of this matter of the ram?

A. During the summer of 1883, I believe, by Mr. Drawbaugh, Mr. Jacobs, and Judge Hill—I believe they called him—I had an introduction to him that way.

Cross-Q. 140. Have you since that time had talk with other persons about the Kissinger ram; and if yes, with whom?

[*Objected to as immaterial.*]

A. I have certainly had conversations concerning the ram, but whether about Kissinger's, Drawbaugh's, or whose I can't tell; I have heard conversations going on almost every evening in my store about it; it has been talked of a great deal around there, but I can't remember all that was said about it; I haven't paid much attention to it; my business is all I care about; I care nothing about the ram.

Cross-Q. 141. Haven't you been in the habit, to some extent, of joining in these conversations?

[*Same objections.*]

A. No, sir.

Cross-Q. 142. What sort of a store is it you keep?

A. A general variety store—dry goods, hardware, and groceries; almost everything that is generally kept in a variety store.

Cross-Q. 143. I understand from your answer to cross-question 140, that your place is somewhat of a resort in the evening, and that during several months past there has been quite a good deal of talk going on in the evenings in your store about this business of the ram.

[*Objected to as immaterial.*]

A. The conversation is nothing more than is usual when anything new occurs or is ventilated, just as people will talk about a murder or a riot or anything of that sort.

Cross-Q. 144. You have referred in your testimony to a Mr. O. H. Miller; a gentleman of that name testified on the part of defendants on the 31st of December, 1883, and gave his residence as Marysville, his trade as painter, and stated that he had, at one time, been constable of the borough of Marysville; is that the gentleman you have reference to?

A. Yes, sir.

Cross-Q. 145. Do you know what that Mr. Miller has been occupied at, for the past month or two?

[*Objected to as immaterial.*]

A. Only so far as he told me himself.

Cross-Q. 146. What was it he told you?

[*Same objection, and further objected to as calling for hearsay.*]

A. In the capacity of an officer, I suppose, employed by the Drawbaugh telephone people to go after witnesses; that was the representation he gave me.

Re-direct by Mr. Hill, de bene esse:

Q. Q. 147. Referring to the visit which Mr. Storrow made to your place about a week ago: where did that interview between you and him take place?

A. In my store-room at Marysville.

Q. Q. 148. Who was present at the interview?

A. No one was present who could hear it.

Q. Q. 149. Who was present in the store-room at the time?

A. My son and William L. Appleton, I believe, are all the persons whose names I remember; I believe William L. Appleton was there, but I am not certain; there were others there, but I do not remember their names.

Q. Q. 150. How long did that interview between you and Mr. Storrow last?

A. Less than one minute.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 28th day of February, 1884.

FRED. M. OTT,
Examiner.

E. W. WISE.

WILLIAM HESS, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

My age is 23, I reside at Marysville, Perry county, Pa., I am a railroader.

Q. 1. By what company are you employed?

A. The Northern Central.

Q. 2. How long have you been employed continuously by the Northern Central Railroad Company?

A. Since the 26th day of September, 1877.

Q. 3. How long have you lived in Marysville?

A. Since the spring of 1870.

Q. 4. Did you know George W. Kissinger, who used to live on the Thomas Draper farm just back of the village of Marysville?

A. I did; yes, sir.

Q. 5. At one time Mr. Kissinger had a hydraulic ram put in on the Draper farm to force water up from the spring to the dwelling house; did you ever see that ram there?

A. Yes, sir.

Q. 6. When did you see it there?

A. In the fall of 1876.

Q. 7. How happened you to be there at that time?

A. I went there with Mr. Bruner and Mr. Fesler to see after some sheep they had there.

Q. 8. Did you go from Marysville with Mr. Bruner and Mr. Fesler, or did you meet them somewhere else and go with them to Mr. Kissinger's place?

A. I met them about a quarter of a mile from my home on the road leading to Mr. Kissinger's.

Q. 9. Where had you been and what had you been doing that day before you met them?

A. I was out setting rabbit boxes and snares.

Q. 10. And on your way home met them?

[*Objected to as leading.*]

A. I was on my way home; yes, sir.

Q. 11. To what part of Mr. Kissinger's place did you go with Mr. Bruner and Mr. Fesler?

A. Around the barn; we went to the barn first.

Q. 12. Was it on a week day or on a Sunday?

A. Week day.

Q. 13. Where did you see the ram?

A. Between the house and the barn, close to the run, as near as I can remember.

Q. 14. Do you remember how the ram looked or how the place looked that it was in?

A. It was boxed up in the ground.

Q. 15. Did you look into the box to see the ram itself?

[*Objected to as leading.*]

[*Question withdrawn.*]

Q. 16. Do you know the first name of Mr. Fesler or Mr. Bruner?

A. Yes, sir; Kem. Bruner and Stiles Fesler.

Q. 17. A witness named Josiah M. Bruner has testified as a witness for defendants in this case (see defts. sur-rebutting record, p. 614) and testified that he moved from Duncannon to Marysville Feb. 27, 1874, and lived at Marysville till Feb. 28, 1877, when he moved back to Duncannon; and that while he lived at Marysville he was in the butchering business till May, 1876; and in the summer and fall of 1876 pastured sheep on Mr. Draper's farm then occupied by Mr. Kissinger; is that the Mr. Bruner you went there with that day, or was it some other Mr. Bruner?

A. That was the man.

Q. 18. While Mr. Bruner, and Mr. Fesler and you were at Mr.

Kissinger's place that day, and you saw the ram there, what, if any, conversation took place between them and you about the ram?

[*Objected to as incompetent and inquiring for hearsay.*]

A. I asked them what it was for, and they told me it was to force water to the house to save the women from carrying it from the spring.

Q. 19. You were then a boy about fifteen or sixteen years old, were you?

A. Between fifteen and sixteen; yes, sir.

Q. 20. When was the last time that you were ever down there where the ram was on Mr. Kissinger's place or the Draper place?

A. I seen it but once, and that was in 1876; I was never down there where the ram was after that; I have been at the house once.

Q. 21. Was it in the evening or in the day time that you were at the house that once?

A. In the evening.

Q. 22. If I understand you correctly, the time when you saw the ram there was in the fall, about a year before you went to work for the Northern Central Railroad Company; am I correct?

[*Objected to as assuming and leading.*]

A. Yes, sir.

Cross-examined by Mr. Howson:

Cross-Q. 23. You went from the barn to the place where you say the ram was that day?

A. We went to the barn and then to the ram.

Cross-Q. 24. From where did you go to that barn?

A. From the valley road.

Cross-Q. 25. The valley road is that which leads in front of the house on the Draper farm?

A. Yes, sir.

Cross-Q. 26. Then you went past the house to the barn, and then from the barn to the place where the ram was, as I understand you; is my understanding correct?

[*Objected to as assuming what the witness has not stated.*

Objection objected to by Mr. Howson as an unwarranted interference with the cross-examination, and as prompting the witness.

Respondents' counsel states that the objection was not for the purpose of

prompting the witness, but for the purpose of prompting complainants' counsel to put his questions properly.]

A. Yes, sir.

Cross-Q. 27. How far in 1876 did you live from the Draper farm, and how far from Marysville?

A. One mile from the Draper farm, as near as I can say; I lived in the borough of Marysville—in the village.

Cross-Q. 28. You then lived where you now live?

A. No, sir; we have moved several times, but not out of the village.

Cross-Q. 29. How long were you and Mr. Fesler and Mr. Bruner at the barn that day, and what were you doing there, and who, if any one, did you meet there?

A. I can't say how long we were there; we were looking after the sheep that were there; I remember of meeting some one there, but don't remember who it was.

Cross-Q. 30. Whereabouts were these sheep—how far had you to go to look them up?

A. They were in the field next to the barn.

Cross-Q. 31. Next to the barn on the side towards the house, or on the side away from the house, or how?

A. In the field away from the barn, towards the river.

Cross-Q. 32. Tell us, as precisely as you can, what time in the fall this was—what month.

A. In September, as near as I can tell.

Cross-Q. 33. That was about the time you were accustomed to set rabbit boxes and snares, was it—in September?

[*Objected to as assuming a "custom" on the part of the witness, of which there is no evidence.*]

A. Yes, sir.

Cross-Q. 34. Is it your recollection that this particular occasion was in the early part or the late part of September?

A. About the middle of September, as I never done any trapping until the middle of September.

Cross-Q. 35. Did you go to school anywhere in the year 1876; and if yes, where, and in what part of the year?

A. I went just when I felt like it; I went to school in Marysville.

Cross-Q. 36. Were you attending school during the fall of that year, and if yes, when did your school term begin?

A. I didn't attend school that early; I would start as a general thing at Christmas, and would never get there before that.

Cross-Q. 37. When you saw the ram on the Draper farm as you say, about the middle of September, 1876, was it in operation—running?

A. I cannot say whether it was running or not.

Cross-Q. 38. Do you mean that you didn't look to see, or that you don't recollect, or what?

A. I didn't look whether it was running or not, and if I would have seen it, I wouldn't have recollected to this day whether it was running.

Cross-Q. 39. Then you don't really recollect whether you saw the ram or not?

A. I recollect of seeing it or I wouldn't have said so.

Cross-Q. 40. Then you do recollect of seeing it, but don't recollect whether it was running or not running; is that it?

A. Yes, sir.

Cross-Q. 41. What sort of a box was that you say it was in—how big was it?

A. It was a boxed-up concern set in the ground; I don't recollect how large it was.

Cross-Q. 42. Tell us a little more particularly what you mean by a boxed-up concern set in the ground.

A. I can't tell you what it looked like any more; it was a square box, as near as I can remember.

Cross-Q. 43. What was this square box set in the ground made of, and was there any of it above the ground?

A. There was some of it above the ground; yes, sir. I don't recollect whether it was made out of plank or ordinary boards; it was made of wood, I think, as near as I can recollect.

Cross-Q. 44. Had this box set in the ground any top to it or was it open?

A. I think it was covered.

Cross-Q. 45. You say you think it was; have you any recollection about it?

A. Not any more than that I think I seen a cover over it.

Cross-Q. 46. Did you take away the cover for the purpose of looking at it?

A. I didn't; I suppose the other men did or they couldn't have seen it.

Cross-Q. 47. I don't ask for suppositions but for facts, so far as you

recollect them, and I now ask you whether either of the other men did take away the cover for the purpose of looking at the ram; and if yes, which one?

[*Objected to as a badgering and improper mode of cross-examination, the witness having already stated first, that, as he recollects, the ram was covered over; secondly, that he saw the ram; thirdly, that he did not open the cover; and fourthly, what would appear to be an inevitable consequence, that somebody else probably did.*

Objection objected to by Mr. Howson on the same grounds that have been given in the case of previous objections of respondents' counsel during the examination of this and the last preceding witness.

Question further objected to by Mr. Hill on the ground that it is immaterial who took off the cover, so long as the witness saw the ram.]

A. I don't recollect who took it off.

Cross-Q. 48. What kind of a cover do you recollect having noticed that day to the ram?

A. I noticed a board cover there.

Cross-Q. 49. A single board, was it, and you recollect this clearly now, do you?

A. There was more than one board covered it.

Cross-Q. 50. How long were you and your companions on the Draper place that day and how long at the place where the ram was?

A. I don't recollect how long we were on the place; I remember I was not very long around the ram—not five minutes at the highest.

Cross-Q. 51. What led you to go from the barn to the place where the ram was?

A. I followed the two gentlemen who were with me; they got there a little before I did—to the ram.

Cross-Q. 52. Where did you and they go to from the place where the ram was?

A. We went on our way home.

Cross-Q. 53. What else do you remember having noticed on the Draper place that day beside what you have already mentioned—what else do you remember to have seen going on?

A. I don't remember of having seen anything else but the sheep and and the ram.

Cross-Q. 54. You say you know Mr. George W. Kissinger; are you

acquainted with any of his family, and did you see Mr Kissinger or any of his family that day?

A. I am acquainted with all the family except one; I have seen that one but never spoke to him. I saw some one there that day; I rather think it was Mr. Kissinger but would not be positive. I don't think I saw any of the rest of the family that day; if I did, I don't remember it.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 28th day of February, 1884.

FRED. M. OTT,
Examiner.

WILLIAM HESS.

Adjourned until February 29, 1884, at 10, A. M.

February 29, 1884, 10, A. M.

Examination resumed pursuant to adjournment.

Present, same counsel.

JOHN KAFFENBERGER, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

My age is nineteen; I reside at Steelton, Dauphin county, Penna; I was farming up at Marysville and just came home to the house of my father, Peter Kaffenberger, at Steelton, on the 7th of December, 1883; my father was examined as a witness in this case the other day.

Q. 1. When your father lived in Rye township, Perry county, did you live in your father's family?

A. No, sir; I was working for John Sitterly the last three years that my father lived up there; before that time I lived with my father.

Q. 2. Where did John Sitterly live?

A. Right above us—adjoining farms.

Q. 3. So that your father's farm lay between Sitterly's farm and the town of Marysville; did it?

A. No, sir; our farm lay off the road; we had a lane to go in.

Q. 4. You had a brother who died last summer, had you not?

A. Yes, sir.

Q. 5. What was his name, and his age at the time of his death?

A. His name was William; he was twenty years, seven months, and thirteen days old when he died.

Q. 6. While you lived in Rye township, did you know Mr. George W. Kissinger, who occupied the Thomas Draper farm from the spring of 1874 to the spring of 1880?

A. Yes, sir.

Q. 7. Did you ever know anything about Mr. Kissinger's getting a hydraulic ram to put in on the Draper farm?

A. Yes, sir.

Q. 8. Did you see the ram yourself?

A. Yes, sir.

Q. 9. Do you know when that ram was brought to the Draper farm?

A. It was between harvest and corn-cutting time; I couldn't recollect what day it was; it was in that time.

Q. 10. And in what year was it?

A. In 1876.

Q. 11. How did you happen to know about the bringing of the ram to Mr. Kissinger's place?

A. I went down to Marysville—me and my brother; and Mr. Kissinger, he stopped and I asked him what that was, and he said that that is the ram to pump the water up to the house.

Q. 12. Where did you see Mr. Kissinger that day when he stopped and told you that?

A. That was about half way between his place and Marysville.

Q. 13. On the valley road?

A. Yes, sir.

Q. 14. What was Mr. Kissinger doing then?

A. He was fetching the ram.

Q. 15. How was he fetching it?

A. In a two-horse farm-wagon.

Q. 16. Was it old Mr. Kissinger or one of the boys?

A. Old Mr. Kissinger himself.

Q. 17. Was anybody with him?

A. No, sir.

Q. 18. Were you and your brother walking, or driving down to Marysville that day?

A. Driving with a horse and spring wagon.

Q. 19. Did you ever see that ram after it was put in on the Draper farm and set in operation?

A. Yes, sir.

Q. 20. When did you first see it after it was put in?

A. I went down to make cider; it was about in October of 1876.

Q. 21. Whose cider-mill did you use in making the cider that time?

A. Mr. Kissinger's.

Q. 22. How long were you there making cider that day?

A. About two hours, as near as I can tell.

Q. 23. Where was the cider-mill?

A. At the lower part of the orchard, standing under a big cherry tree.

Q. 24. How far from the spring?

A. About a hundred yards.

Q. 25. Was it pretty near on a line between the spring and the house?

A. How do you mean by that?

Q. 26. Describe as near as you can the location of the cider-mill with respect to the spring and the house.

A. It was about two thirds on the upper side towards the house, and one third towards the woods.

Q. 27. I judge that you mean that the cider-mill was about two thirds of the way from the house to the spring?

A. Yes, sir.

Q. 28. Had you been anywhere else that day to make cider?

A. Yes, sir.

Q. 29. Where?

A. At John Sitterly's, and their cider-mill wasn't in order.

Q. 30. And you went down to Mr. Kissinger's to make your cider there because Mr. Sitterly's cider-mill was not in order—is that the idea?

A. Yes, sir.

Q. 31. Did you see Mr. Sitterly that day while you were at his place?

A. No, sir.

Q. 32. Why not?

A. He was at the Centennial.

[*Answer objected to by Mr. Howson as not evidence.*]

Q. 33. How did you know he was at the Centennial?

A. Because I asked Mrs. Sitterly where Mr. Sitterly went.

[*Answer objected to by Mr. Howson as above.*]

Q. 34. When did you ask her that?

[*Objected to as incompetent.*]

A. The day we went to make cider, and she told me he wouldn't be back for a couple of days, and that her hireling couldn't fix the cider-mill until he came back, and so we went to Kissinger's.

Q. 35. While you were at Mr. Kissinger's making cider that day, how happened you to see the ram?

A. I heard the noise, and me and my brother went down to it.

Q. 36. What sort of a place was the ram in?

A. There was a hole, and it was laid up with loose stones; it was about three feet deep.

Cross-examined by Mr. Howson:

Cross-Q. 37. You say that you were farming at Marysville up to the 7th of December. On what farm were you working, and how long last year were you there?

A. From the 23d day of February to the 7th of December; I was working on John Sitterly's farm.

Cross-Q. 38. The same John Sitterly whom you mentioned in your examination-in-chief?

A. Yes, sir.

Cross-Q. 39. How far is John Sitterly's place from the village of Marysville, and how far, or about how far, from the Draper farm?

A. It is about a mile and a half from Marysville to Sitterly's farm, and about a mile down from Sitterly's farm to Draper's farm.

Cross-Q. 40. Were you working for Mr. Sitterly in 1882?

A. Part of the time.

Cross-Q. 41. What time of the year was it that you first began to work for Mr. Sitterly?

A. That I just couldn't tell; some time in the summer he sent for me and I went there.

Cross-Q. 42. What summer?

A. In 1882.

Cross-Q. 43. What were you doing before you worked for Mr. Sitterly?

A. I was working at Lochiel.

Cross-Q. 44. How long were you working there and when did your work there begin?

A. I couldn't just recollect when I began; I worked there three or four months.

Cross-Q. 45. How long before going to work for Mr. Sitterly did you leave Lochiel?

A. It was Saturday, and on Sunday I went up there.

Cross-Q. 46. In your direct examination, you told us that you were working for Mr. Sitterly while your father was living in Rye township; when was it that you went to work for Mr. Sitterly while your father was living there?

A. It was the 7th of April, but I couldn't recollect what year it was.

Cross-Q. 47. When and how did you get to know Mr. George W. Kissinger?

A. He used to come up to our place; I got to know him in 1874—the first year he moved up there.

Cross-Q. 48. Did you go to school while living in Rye township?

A. Yes, sir; but not very often.

Cross-Q. 49. When did you quit going to school for good?

A. I couldn't recollect that.

Cross-Q. 50. Whom did you see on the Kissinger place the day you saw the ram?

A. No one but Mrs. Kissinger; she was standing at the kitchen door.

Cross-Q. 51. Then you went by the house, did you?

A. Yes, sir; around the house on one side to go in from the road.

Cross-Q. 52. When were you last on the Draper farm?

A. I couldn't recollect that.

Cross-Q. 53. Do you remember what you were doing there when you were last on the Draper farm?

A. I was sent there on an errand.

Cross-Q. 54. What was the errand and who sent you?

A. I was sent after a mowing scythe.

Cross-Q. 55. When last before that were you on the Draper farm, and what was your errand there?

A. I was sent there for a set of harness; I couldn't recollect when that was.

Cross-Q. Were you on the Draper farm at any time last year?

A. Yes, sir.

Cross-Q. 57. More than once?

A. I was there when we were making hay on that place—I mean

Sitterly—I was working for him, and he was making hay on the half; that was last year; I was at work there one day.

Cross-Q. 58. Was that before or after you went there to borrow the scythe?

A. It was afterwards; it was the last year I was working for Sitterly—1883 we made the hay for Daniel Scholl for the half.

Cross-Q. 59. Then, if I understand you, the time that you borrowed the scythe was not the last time you were on the Draper farm?

A. No, sir; the last time I was there was when we made the hay.

Cross-Q. 60. Was it after or before you went there to borrow the scythe that you went there about the harness?

A. That was before that; the scythe, I mean, was before the harness.

Cross-Q. 61. What other errand do you recollect of having had to the Draper farm besides the cider-making, the scythe, the harness, and the hay-making?

A. That is all.

Cross-Q. 62. Can you give us any idea of how often you were on the Draper farm while your father was living in Rye township?

A. No, sir; I wasn't there very often.

Cross-Q. 63. Who first spoke to you about testifying in this case, and when?

A. Ol. Miller subpœnaed me; that is all that he ever spoke to me.

Cross-Q. 64. When was that?

A. The 17th of January, 1884, I was to be here.

Cross-Q. 65. Had you no talk with anybody about the ram before that?

A. No, sir.

Cross-Q. 66. And had heard nobody talking about it?

A. I had heard them talking about it, but I never paid no attention to it.

Cross-Q. 69. Who was it that you heard talking about it, and where?

A. I couldn't just tell you who all; a good many I heard around Sitterly's.

Cross-Q. 68. I suppose while you were at work at Sitterly's last year, you had occasion to be in Marysville every now and then?

A. Yes, sir; in through the day but never at night.

Cross-Q. 69. Name a few of the persons whom you heard talking about this ram business at Sitterly's.

A. I couldn't tell you who that was; there were a good many persons there, and I couldn't just tell who they were.

Cross-Q. 70. Your memory won't allow you to name a single person; is that it?

A. I couldn't tell you; there was so many there I don't know which one—right—talked about it any more.

Cross-Q. 71. Did Squire William K. Fenn, of Marysville, ever ask you anything about the ram?

A. No, sir; not that I can recollect of.

Cross-Q. 72. The day you say you saw the ram on the Draper farm, did you see it before, or after making the cider?

A. The same time we was making cider there.

Cross-Q. 73. What I wished to know was, whether you made the cider first, or first went to see the ram?

A. We went to see the ram first; we heard the noise when we drove in, and we drove on up to the cider-mill and then went back.

Cross-Q. 74. What else do you remember noticing about the Draper place that day beside the ram itself and the rough stone work which you have mentioned?

A. That is all that I recollect.

Cross-Q. 75. Was this early or late in the fall?

A. It was in October some time—about the time you put the apples away.

Cross-Q. 76. In the early or late part of the month?

A. It was about the middle of October.

Cross-Q. 77. Whose wagon were you driving when, as you say, you met Mr. Kissinger coming from Marysville?

A. Father's.

Cross-Q. 78. What work, if any, were you doing in the year 1878?

A. I don't recollect.

Cross-Q. 79. The same question as to 1879?

A. I don't recollect where I was working that year.

Cross-Q. 80. You have been living at home with your father since last December, I understand?

A. Yes, sir.

Cross-Q. 81. Were you doing any work; if yes, what work?

A. I was helping my pap at shoe-making.

Cross-Q. 82. In 1876 you were eleven years old; is that right?

A. Yes, sir.

Cross-Q. 83. You say that when you met Mr. Kissinger driving from Marysville you were driving your father's wagon; when and where did he get that wagon?

A. He bought the buggy from a man up the valley, and took the box off and put a spring-wagon box on; he bought it in the spring of 1875—the spring after we moved there—the next spring.

Cross-Q. 84. You wish us to understand, do you, before Mr. Miller summoned you to be here on the 17th of January, no one had spoken to you on the subject of the ram?

A. No, sir; there had not.

Cross-Q. 85. Did you attend here on the 17th of January?

A. Yes, sir.

Cross-Q. 86. Have you attended on any other day besides that; and if yes, when?

A. I was here on the 18th day of January, and the others I didn't mark down; this makes nine days I have been here—different days I was dismissed and then I was called up again.

Cross-Q. 87. On the several different days that you were here and dismissed, as you have said, what acquaintances, if any, did you meet, and where did you meet them?

[*Objected to as utterly immaterial and trivial.*]

A. I met them at Jacobs' office—all I knowed; there was only a couple there—Mr. Bill Meals, and Sue Kissinger, and Mrs. Hart, and old Mrs. Meals; except that Mr. Hill was there, and Mr. Jacobs and William Fenn.

Cross-Q. 88. You name a Mrs. Hart in your last answer; what, if you know, was Mrs. Hart's name before marriage?

A. I think it was Kate Kissinger.

Cross-Q. 89. You know her and the Sue Kissinger, whom you have named, as daughters of George W. Kissinger who occupied the Draper farm, don't you?

[*Same objection*]

A. Yes, sir.

Cross-Q. 90. Did you meet those people you have named at Mr. Jacobs' office on more than one day, and if yes, how many?

Cross-Q. 69. Name a few of the persons whom you heard talking about this ram business at Sitterly's.

A. I couldn't tell you who that was; there were a good many persons there, and I couldn't just tell who they were.

Cross-Q. 70. Your memory won't allow you to name a single person; is that it?

A. I couldn't tell you; there was so many there I don't know which one—right—talked about it any more.

Cross-Q. 71. Did Squire William K. Fenn, of Marysville, ever ask you anything about the ram?

A. No, sir; not that I can recollect of.

Cross-Q. 72. The day you say you saw the ram on the Draper farm, did you see it before, or after making the cider?

A. The same time we was making cider there.

Cross-Q. 73. What I wished to know was, whether you made the cider first, or first went to see the ram?

A. We went to see the ram first; we heard the noise when we drove in, and we drove on up to the cider-mill and then went back.

Cross-Q. 74. What else do you remember noticing about the Draper place that day beside the ram itself and the rough stone work which you have mentioned?

A. That is all that I recollect.

Cross-Q. 75. Was this early or late in the fall?

A. It was in October some time—about the time you put the apples away.

Cross-Q. 76. In the early or late part of the month?

A. It was about the middle of October.

Cross-Q. 77. Whose wagon were you driving when, as you say, you met Mr. Kissinger coming from Marysville?

A. Father's.

Cross-Q. 78. What work, if any, were you doing in the year 1878?

A. I don't recollect.

Cross-Q. 79. The same question as to 1879?

A. I don't recollect where I was working that year.

Cross-Q. 80. You have been living at home with your father since last December, I understand?

A. Yes, sir.

Cross-Q. 81. Were you doing any work; if yes, what work?

A. I was helping my pap at shoe-making.

Cross-Q. 82. In 1876 you were eleven years old; is that right?

A. Yes, sir.

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Cross-Q. 87. On the several different days that you were here and dismissed, as you have said, what acquaintances, if any, did you meet, and where did you meet them?

[*Objected to as utterly immaterial and trivial.*]

A. I met them at Jacobs' office—all I knowed; there was only a couple there—Mr. Bill Meals, and Sue Kissinger, and Mrs. Hart, and old Mrs. Meals; except that Mr. Hill was there, and Mr. Jacobs and William Fenn.

Cross-Q. 88. You name a Mrs. Hart in your last answer; what, if you know, was Mrs. Hart's name before marriage?

A. I think it was Kate Kissinger.

Cross-Q. 89. You know her and the Sue Kissinger, whom you have named, as daughters of George W. Kissinger who occupied the Draper farm, don't you?

[*Same objection*]

A. Yes, sir.

Cross-Q. 90. Did you meet those people you have named at Mr. Jacobs' office on more than one day, and if yes, how many?

[*Same objections.*]

A. Two days.

Cross-Q. 91. You have referred to a Bill Meals; a W. H., testified for the defendants here on the 28th of January, 1884, and described himself as a resident of Springfield, Ohio, formerly living in the borough of Marysville, Perry county, and that his father's name was Ferdinand, and lived in Fishing Creek valley, Perry county; is that the Bill Meals you meant?

[*Same objection.*]

A. Yes, sir.

Cross-Q. 92. Is the Mr. Sitterly, for whom you say you worked for last year, living on the same farm that he occupied while your father lived in Rye township, and has he been living on that farm ever since you know him?

A. No, sir; he moved away from there in the spring of 1877, and stayed away three years; he is living there now.

Cross-Q. 93. Where was he living during those three years?

A. Over in Cumberland county.

Cross-Q. 94. When, according to your recollection, was it he came back to Rye township?

A. In 1880.

Cross-Q. 95. When, according to your recollection, was it that your father moved away from Rye township?

A. It was two years this last fall that we moved away from the place.

Cross-Q. 96. Who was it went with you to make the cider as you have testified?

A. My brother, who is dead.

Recess until 2, P. M.

Re-direct by Mr. Hill:

Q. Q. 97. You state in your cross-examination that Mr. Sitterly moved away from Rye township in the spring of 1877, and moved back again into Rye township in 1880. What time in 1880 was it when he moved back again?

A. The first day of April.

Q. Q. 98. Do you know when Mr. George W. Kissinger moved away from the Draper farm?

[*Objected to as not reëxamination, and furthermore, because respondents*

counsel has already informed the witness in interrogatory 6 *as to the time during which Mr. Kissinger was living on the Draper farm.*]

A. Yes, sir; in 1880; April 1—along there.

Q. Q. 99. You have spoken in cross-examination of having been sent to the Draper farm to get a scythe at one time, and to get a harness at another time. Was that when Mr. Kissinger lived there, or after he moved away?

A. Yes; when he lived there.

Q. Q. 100. When you were first asked in cross-examination about getting the scythe and getting the harness, I understood you to state that you got the harness before you got the scythe, but afterwards, later on in your cross-examination and upon further reflection, you stated, as I understand it, that the errand to get the scythe was before the errand to get the harness. Is it now your memory, upon full reflection, that you got the scythe before you got the harness?

[*Objected to as a leading and improper question.*]

A. Yes, sir.

Q. Q. 101. How soon after Mr. Sitterly moved back to Rye township did you commence to work for him?

A. The 7th day of April of the same year.

Q. Q. 102. How long did you work for him that year and at what wages?

[*Objected to as not reëxamination.*]

A. At seven dollars a month for eight months.

Q. Q. 103. When did you next work for him after that season?

A. In March, some time, of 1881.

Q. Q. 104. How long did you work for him in 1881, and at what wages?

[*Objected to as not reëxamination.*]

A. Ten dollars a month; ten months.

Q. Q. 105. When did you next work for him after the season of 1881?

[*Objection continued.*]

A. I went up on the 3d of July, 1882.

Q. Q. 106. Then, if I understand you correctly, you worked for him in 1880, 1881, 1882, and 1883; am I right?

[*Objection continued.*]

A. Yes, sir; and 1883.

Q. Q. 107. In your first answer, I understand you to say that you were working for Mr. Sitterly the last three years that your father lived up there in Rye township; I now understand you to testify that you first worked for Mr. Sitterly in 1880 and then in 1881, which would make two seasons before your father moved away; which statement is correct?

A. The last one.

Re-cross by Mr. Howson:

Re-cross-Q. 108. When did it come to your mind that it was on the 3rd day of July, 1882, that you went to work for Mr. Sitterly in that year?

A. Because it was on the day before the 4th of July, and I was up there at a party on the 4th.

Re-cross-Q. 109. What I want to know is, when you remembered this?

A. There was a party up there on the 4th of July.

Re-cross-Q. 110. I will ask you once more, when it was that this fact came into your memory?

A. While I was eating my dinner, I just thought about it.

Re-cross-Q. 111. Where and with whom did you dine?

A. Over at the Franklin House; me and George Rhoads eat our dinner there.

Re-cross-Q. 112. What is George Rhoads, and whereabouts does he live?

A. He lives in Marysville, and is a tinner by trade, and carries it on for himself.

Re-cross-Q. 113. You have, and have had all along, a clear recollection that it was on the 7th of April, 1880, that you first went to work for Mr. Sitterly?

[*Objected to, as the witness has already testified in his 46th cross-answer that at that time he remembered it was the 7th of April, but didn't remember the year.*

Complainants' counsel protests against this unfair interference with the cross-examination, and gives notice of a motion to strike out the deposition.

Respondents' counsel protests in turn against complainants' counsel assuming and stating in his question the exact opposite of what the witness has previously testified to upon some trifling and immaterial point.]

A. Yes, sir.

Re-cross-Q. 114. How long do you say it was that Mr. Sitterly was away from Marysville living in Cumberland county?

A. Three years.

Re-cross-Q. 115. And, according to your recollection, he moved away to go to Cumberland county when?

A. In the spring of 1877.

Re-cross-Q. 116. When did you last see Mr. Sitterly?

A. I seen him last Sunday at half past eleven o'clock, when I left his house; I was up there.

Re-cross-Q. 117. What were you doing up there, and who, if anybody, was up there with you?

[*Objected to as not re-cross-examination.*]

A. I went up myself last Friday to go to a public sale on Saturday.

Re-cross-Q. 118. Whom of your old Marysville acquaintances did you meet while you were up there on Friday, Saturday, and Sunday?

[*Objected to as before, and as merely immaterial and trivial.*]

A. I met Will Fenn, and I told him that if I wouldn't get the rent from Bomgardner, my father told me to give it over to him to collect.

Re-cross-Q. 119. By Will Fenn you mean the gentleman who is called 'Squire Fenn, at Marysville, do you not?

[*Same objection.*]

A. Yes, sir.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 29th day of February, 1884.

FRED. M. OTT,
Examiner.

JOHN KAFFENBERGER.

HENRY S. MAGONELL, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

My age is forty-four; residence, Fairview township, York county; I am a farmer.

Q. 1. Did you ever help rebuild any foot-bridge that had been washed away on the Yellowbreeches creek?

A. Yes.

Q. 2. What foot-bridge did you ever help rebuild on that creek?

A. The one at Teahl's mill just below Milltown, sometimes called Etter and Shanklin's mill.

Q. 3. When did you help rebuild that foot-bridge?

A. In 1873.

Q. 4. About what time in 1873?

A. I couldn't just be positive; it was in September, or the beginning of October, to the best of knowledge.

Q. 5. Mention any circumstance that enables you to state the time as being in September, or the early part of October.

A. It was just before I was married.

Q. 6. What was the date of your marriage?

A. The 3d of November, 1873.

Q. 7. How long did you work at rebuilding that foot-bridge?

A. About three quarters of a day we were at it.

Q. 8. Who was the supervisor at that time?

A. Charles Sweeney.

Q. 9. Who worked with you at rebuilding that bridge?

A. I can't remember but Sweeney the supervisor.

Q. 10. Was there anybody else besides Sweeney who worked with you but whose name you have forgotten?

A. No, sir.

Q. 11. Why was it necessary to rebuild the foot-bridge at that time?

A. For the benefit of travel.

Q. 12. How had the bridge gotten into such a condition that it was necessary to rebuild it?

[*Objected to for the reason that it does not appear that the witness had any personal knowledge of how the bridge came to be out of repair at all.*]

A. From high water.

Q. 13. When was this high water?

A. It was some time in August; I couldn't give the date, but it was in August some time.

Q. 14. What damage had the high water done to the bridge?

[*Same objection.*]

A. It had taken about—some part of the bridge away.

Q. 15. What part of the bridge?

[*Same objection.*]

A. The part on the York county side.

Q. 16. How much of the bridge was gone when you commenced to repair it?

A. About fifty-five or sixty feet, as near as I can tell.

Q. 17. What lumber did you use in rebuilding the portion that had gone?

A. Oar-stems and boards.

Q. 18. Was it old or new lumber?

A. It was the old lumber, except a few new boards.

Q. 19. What do you mean by the old lumber?

A. The old oar-stems.

Q. 20. Had those old oar-stems been used in the same bridge before?

A. Yes, sir.

Q. 21. In rebuilding the bridge, were any of the old boards used that had been used before?

A. Yes, sir.

Q. 22. Do you remember what the condition of the fall wheat was at the time you rebuilt that bridge?

A. The fall wheat was up very nicely at the time we built the bridge.

Q. 23. Were you ever in Daniel Drawbaugh's shop at Milltown?

A. No, sir.

Q. 24. Were you acquainted with John F. Hursh, who formerly lived in Fairview township, and moved west about 1879?

A. Yes, sir.

Q. 25. How well were you acquainted with him?

A. I knew John Hursh for twenty-five years; I knew John right well.

Q. 26. Did you ever work for him?

A. Yes, sir.

Q. 27. How much?

A. I worked a good bit for him.

Q. 28. Did you ever hear him say anything about Daniel Drawbaugh's talking-machine?

A. Yes, sir.

Q. 29. How many times did you ever hear him speak about it?

A. At different times.

Q. 30. About what time was it you first heard Mr. Hursh speak about Mr. Drawbaugh's talking-machine?

A. Before I was married.

Q. 31. What is your best recollection as to how long it was before you were married?

[*Objected to as asking for guess-work.*]

A. To the best of my knowledge it was a couple of winters before I was married.

Q. 32. Do you remember the substance of the conversation between you and Mr. Hursh at the time Mr. Hursh first spoke to you about the talking-machine?

A. No, sir; I do not.

Q. 33. If you remember anything of it, tell us so much as you remember of that conversation.

[*Objected to because witness has already stated that he does not remember the substance of what was said.*]

A. I don't remember anything at all that I can think of.

Q. 34. Did you ever have a conversation with Mr. Hursh about Drawbaugh's talking-machine, the substance of which you do remember?

A. Yes, sir; he spoke to me about the talking-machine.

Q. 35. Give us the substance of the conversation with him which you do remember.

A. He asked me to go along over to Drawbaugh's shop.

Q. 36. State the whole conversation, so far as you remember it.

A. He wanted me to go along over to see the telephone.

Q. 37. Was that the name he used for it—telephone?

A. That was the name he used; yes, sir.

Q. 38. To the best of your recollection, about what time was it that you had that conversation with him?

[*Objected to as asking for guess-work.*]

A. In the winter season.

Q. 39. Have you any idea of what year it was?

[*Same objection.*]

A. No, sir.

Q. 40. If I understand you correctly, he had mentioned the subject of Drawbaugh's talking-machine to you, about a couple of winters before you were married in November, 1873, but you do not recollect what he said about it at that time. Am I correct?

[*Objected to as leading.*]

A. No, sir.

Q. 41. That is the way I understood your testimony, and if not correct, will you please state when Mr. Hurst first mentioned the subject of Drawbaugh's talking-machine to you?

A. About two winters before I was married he first stated it to me.

Q. 42. And you do not remember what was said about it at that time, if I understand you. Am I correct in that?

[*Objected to for the reason that the witness has already stated that he does not remember.*]

A. Yes, sir; he said they talked over a wire.

Q. 43. Did he make that remark at the first conversation that you had with him about it?

[*Objected to for the reason that the witness has already testified that he did not remember what was said at the alleged first conversation.*]

A. Yes, sir.

Cross-examined by Mr. Storrow:

Cross-Q. 44. At the time you did the work at Etter and Shanklin's bridge, which you have testified about, what farmer occupied the farm at the York end?

[*Objected to because it doesn't appear that the witness had any personal knowledge of that matter.*]

A. David Spangler.

Cross-Q. 45. What part of the bridge did you put up or replace on that day?

A. The York county side.

Cross-Q. 46. Do you mean the sloping part that goes from the ground up to the first pier?

A. Yes, sir.

Cross-Q. 47. When you went there that day to begin your work on it, was there already a temporary plank placed there, so that a person could walk up on to the bridge?

[*Objected to as immaterial.*]

A. Yes, sir.

Cross-Q. 48. And the bridge was standing, so that a person could walk across, could he?

A. The bridge was standing.

Cross-Q. 49. Who had put up that temporary plank?

[*Objected to as a matter which doesn't appear to have come within the personal knowledge of the witness.*]

A. I did not learn.

Cross-Q. 50. Were you not told that day, and did you not understand who put it up?

[*Objected to as calling for hearsay.*]

A. No, sir.

Cross-Q. 51. How long before that day had you been at that bridge?

A. I hadn't been at that bridge for five years before that day.

Cross-Q. 52. When next after that day were you at that bridge?

A. I haven't been at the bridge since we fixed it.

Cross-Q. 53. How many oar-stems were used in that sloping walk which you put up that day?

A. Two.

Cross-Q. 54. So it was made with an oar-stem on each side and cross-pieces and boards laid on them?

A. Yes, sir.

Cross-Q. 55. Was it strong enough to support itself, or did you have to put a trestle under the middle of it?

A. The trestle was there.

Cross-Q. 56. Where were you living at that time—on whose farm?

A. I was living with my father.

Cross-Q. 57. What is his name, and is he now living?

A. Henry Magonell—no middle name; he is now dead; he died in 1879.

Cross-Q. 58. In your 42d answer you say that Mr. Hursh said they talked over a wire; did he say who talked over a wire?

A. No, sir.

Cross-Q. 59. This time when he said that they talked over a wire—was that the time when he asked you to go up with him to see it, or not?

A. Yes, sir; to go up to see it.

Re-direct by Mr. Hill:

Q. Q. 60. Did he ask you on two different occasions to go up and see it, or only on one?

A. Yes, sir; he asked me at two different times.

Q. Q. 61. Did he ask you to go up to see it the first time that he spoke to you about it before you were married?

A. Yes, sir.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 29th day of February, 1884.

FRED. M. OTT,
Examiner.

HENRY S. MAGONELL.

Adjourned until March 1, 1884, at ten, A. M.

MARCH 1, 1884, 11, A. M.

Examination resumed; present, same counsel.

LEWIS W. BRABSON, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

My age is fifty-one; I reside in Marysville, Perry county, Pa.; I am a builder, undertaker, and coal dealer.

Q. 1. How long have you lived in Marysville?

A. About fifteen years.

Q. 2. Do you know Mr. George W. Kissinger, who formerly rented and occupied the farm of Mr. Thomas Draper just back of the village of Marysville?

A. I do.

Q. 3. Did you ever do any work on Mr. Kissinger's dwelling-house on that farm; if so, what work?

A. I did on a front porch and cupola on the house.

Q. 4. Did you make and keep any book-entry of that work?

A. I did of the amount of days and the amount per day.

Q. 5. Have you your book here containing those entries?

A. I have.

Q. 6. Will you please produce it and point out the account with Mr. George W. Kissinger for that job in order that the examiner may copy it upon the record?

A. Yes, sir; here is the entry.

[*Witness produces account book in which appears the following entry, which witness points out to the examiner.*

Respondents' counsel requests the examiner to copy said entry upon the record.]

The entry is as follows:

"272

1877	George Kissinger		Dr.	Cr.
	Sept 15	To 8 days work at porch and cupola at 1 40 - - -	11 20	
	" 28,	" 60 shingles - - -	45	
		1878		
	Jan 10	" 1–2 ton coal - - -	2,00	
	Mar 19	by cash for coal - - -		2 00
	" 22	to 1–2 ton coal at different times	2,00	
	" 2	" 1–2 bushel coal - - -	27"	

Q. 7. When were these entries made in this book, and by whom?

A. They were made at the time the work was done, and by myself; I always kept my own books; I posted my books once a week.

Q. 8. This book appears to be a ledger of considerable size, and contains a large number of accounts running from 1872 to 1880 or 1881; is this the book in which you kept your financial accounts from 1872 to 1880?

A. In what regard do you mean? It is the book in which I kept account of goods bought and work done; there was a blotter that I kept during the week; this is a book that was kept for day-book and ledger both, the way I kept it; it contains the account of work done by men who worked for me, and the cash I paid them; and it also contains my charges for work done.

Q. 9. Is there any other account with George W. Kissinger in the book, except the one which you have pointed out to the examiner, and which he has copied on to the record?

A. There is not.

Q. 10. At the time when you worked on that porch and cupola, as shown by your book, where did you get your meals?

A. I ate breakfast at home, and dinner and supper at Mr. Kissinger's.

Q. 11. I see by the book that you charge Mr. Kissinger a dollar and forty cents per day for the work; was that your usual charge for days' work?

A. No, sir.

Q. 12. Why was it made a dollar and forty cents per day to Mr. Kissinger, if you remember?

A. It was the contract I made with him after the price of the two meals was taken off; he charged for the board, and I agreed to work

then for a dollar and forty cents; that was what I was to have after the price of the two meals was taken off.

Q. 13. Did you procure from Mr. Kissinger the job of work on that porch and cupola, or did you procure the job from some one else; and if so, from whom?

A. No; it was William Taylor that asked me to go there and help him with the porch and he would give Kissinger for the pay; I then asked Kissinger whether it would be all right, and he said it would; we then made a bargain as to the amount I was to have a day, less the two meals.

Q. 14. At the time Taylor talked with you about doing that work, and before you began the work, was there any talk between you and Taylor as to how you would get your pay, and about what sort of a man Kissinger was with respect to paying debts; and if so, what was the talk?

[*Objected to as incompetent, immaterial, and irrelevant.*]

A. There was. When he asked me to go there to work I objected to it. I said he was a man that was slow in paying his debts. Taylor said he thought there would be no risk to run with regard to the pay. Taylor said that he was taking cabbage and potatoes; that he had a family to keep, and it suited him the same as money, and he thought that I could do the same. I asked Kissinger, when I quit work there, such trade as I needed. He said I could have anything that he raised on the farm. He also brought me peaches, cabbage, and potatoes, but I don't know what amount; I didn't keep any account of it.

Q. 15. You let Mr. Kissinger keep his own account of what he brought you on account of your work, did you?

A. It was afterwards that he brought me the stuff—at different times—and didn't leave a bill of it. Sometimes I was away when he came. I couldn't keep any account of it—told Mr. Kissinger to keep account of it, and to come around and settle, but he never came to settle.

Q. 16. Did you ever do any work for Mr. Kissinger after the time of the charges in the book which have been copied on to the record?

A. No, sir.

Q. 17. You have testified that while you were doing that work you took your dinner and supper at Mr. Kissinger's house; when did you last take any meal at Mr. Kissinger's house?

A. During the time that I worked there.

Q. 18. At the time when you worked there and got your meals at Mr. Kissinger's house, where did the Kissinger family get water for household use and also for drinking purposes upon the table?

A. At the spring; I don't know anything about the household, but only for the table use.

Q. 19. If you remember any conversation in the Kissinger family, while you were at your meals there, in respect to the drinking water on the table, or getting the drinking water, will you please state what it was?

[*Objected to as inquiring for hearsay; not evidence.*]

A. One day when we sat down to dinner there was no water on the table. Mr. Kissinger asked where the water was; Mrs. Kissinger said one of the girls had just went to the spring to fetch a bucket full of water for the table; Mr. Kissinger seemed to be a little cross because the water wasn't there the time he sat down to the table, and then he made the remark that the water that the ram forced up wasn't fit to use—it was so warm—and that they carried their drinking water from the spring.

Q. 20. While you were there at work that time did you go down to see the ram?

[*Objected to as leading.*]

A. I did not.

Q. 21. Why not?

[*Objected to as incompetent.*]

A. Because it wasn't any curiosity to me.

Q. 22. Had you ever before that had anything to do with hydraulic rams; if so, when?

A. I had saw them put in when I was quite young.

Q. 23. While you were at work there at Mr. Kissinger's, did anything else occur that attracted your attention—I mean anything in connection with the ram—if so, what?

A. The thump of the ram, as I would call it.

Q. 24. Did you hear that?

A. I did.

Q. 25. You were a member of Chestnut Grove Cemetery Association at Marysville, were you not?

A. I was a stockholder and a director.

Q. 26. From a minute of the 5th annual meeting of that association, held on June 4, 1877, and which was put in evidence here in connection

with the deposition of Mr. E. W. Wise, it appears that a Mr. Brabson was present at the meeting, and that at the meeting, the superintendent, Mr. Wise, was requested among other things to estimate the cost of putting in a hydraulic ram for the purposes of the cemetery, and to report in July; were you the Mr. Brabson who was present at that meeting of June 4, 1877, and if so, do you remember the meeting?

[*Objected to as leading.*]

A. I am, and I do.

Q. 27. State, so far as you remember it, what conversation or discussion there was at that meeting about the ram, and whether or not Mr. Kissinger's ram was talked about at that meeting.

[*Objected to as incompetent and abominably leading.*]

A. Mr. Wise said we ought to have a ram to throw the water up into the cemetery; he thought it would be very handy for the use of the lot-holders to get water to water the flowers on the graves through the summer season; he then referred to the ram at Kissinger's. Of course, he was instructed then to make an estimate—he was instructed to measure the ground at two different points—one from the run, and the other from a spring, and then to see what the cost would be, and then to make a report to the July meeting.

Q. 28. If there was any general talk at that meeting of June 4, 1877, with regard to the ram at Mr. Kissinger's place, will you state so much as you remember of the talk or the substance of it?

[*Objected to on the same grounds; also as inquiring for hearsay, and as already asked and answered.*]

A. Part of the board objected at first that the ram at Kissinger's did not work well; then it was concluded that it hadn't fall enough in the ground to where the ram was set—that that was the trouble; they thought if the ram was put in at the cemetery, that it would work all right, and that they had plenty of fall.

Q. 29. I have been informed that Mr. E. W. Wise is one of the most prominent citizens and business men in Marysville; is my information correct or not?

A. It is, to the best of my knowledge.

Q. 30. Was that meeting of June 4, 1877, the first time that you had talked with Mr. Wise on the subject of putting in a ram for the cemetery?

A. No, sir.

Q. 31. When and where had you discussed the matter with him before that time?

A. In the cemetery in the fall of 1876, I think, was the first; he spoke spoke of it several different times in the cemetery; we were often together in the cemetery.

Q. 32. What is your best recollection as to what time it was in the fall of 1876 that he and you being in the cemetery together discussed the question of a hydraulic ram for the cemetery?

[*Objected to as asking for guess-work.*]

A. They always cleaned the cemetery off after harvest—cut the grass and grubbed out the bushes; Mr. Wise was superintendent of the cemetery; him and I was walking over the ground; he was showing me how they had cleaned up the ground, and then he made the remark that if we had a ram in to throw the water up how nice it would be; he said he thought the cost would be but little as the digging of the ditch would not cost anything, but the lot-holders would give their time free.

Q. 33. What I more particularly inquired for was your best recollection as to what time in the fall of 1876 this conversation in the cemetery took place.

[*Same objection.*]

A. I would say the last of September.

Q. 34. At that conversation at the cemetery between you and Mr. Wise, was anything said about Mr. Kissinger's ram or not?

[*Objected to as leading.*]

A. I don't think there was; I don't remember of anything being said.

Q. 35. Do you remember whether or not you had before that time heard of Mr. Kissinger's having put a ram in at his place?

[*Objected to as inquiring for guess-work about hearsay.*]

A. I heard that he was going to have one put in; I didn't hear that he had one put in—not at that time.

Q. 36. Were you ever at Mr. Kissinger's house when anybody was there to examine the premises with reference to putting in a ram?

[*Objected to as leading.*]

A. I was there on one Sunday afternoon; I was only in the basement of the house; I was asked to come there to help eat some watermelons that afternoon—was why I went there.

Recess until 2.30, P. M.

Q. 37. Whom did you see there at Mr. Kissinger's house on that Sunday afternoon when you went there to help eat the watermelons, as stated in your last answer?

A. I don't remember of seeing but Kissinger himself.

Q. 38. How did you come to know, then, that there was a man there that day looking at the location with reference to putting a hydraulic ram in?

[*Objected to as assuming.*]

A. Mr. Kissinger met us in the front yard when we arrived at the house, and then invited us around to the kitchen where he said he had some watermelons gathered in; he then took us into a room aside from the kitchen, and then cut some and laid them on the table and told us to help ourselves; that he would have to go out; that Mr. Drawbaugh was there now looking at the location of the ground to put a ram in; we only remained there a few minutes; the melons were small and not very good.

[*Answer objected to by Mr. Howson as not evidence.*]

Q. 39. You didn't see Mr. Drawbaugh, then, as I understand you?

A. No, sir; I was not upstairs.

Q. 40. Was anything said there that day about how Mr. Drawbaugh got there, or how he was going to get home; if so, what?

A. Mr. Kissinger made the remark when he left us in the basement—he said he would have to be in a hurry; that Mr. Drawbaugh would have to be sent home; that is about all that I remember.

Q. 41. Did you understand at the time from Mr. Kissinger how he was going to send Mr. Drawbaugh home?

[*Objected to, the witness having already given what he says is all that he remembers on the subject.*]

A. No, sir.

Q. 42. The porch that you built there was about on a level with the parlor floor of the house, was it not, and on the front side of the house towards the valley road?

A. I think the floor of the porch was a small step below the level of the floor of the house at the front door; it was on the south side of the house, fronting the valley road.

Q. 43. The basement or kitchen was at the back side of the house, and one story below the parlor floor, was it not?

A. Yes, sir.

Q. 44. While you were at work there on the cupola and porch in September, 1877, was any tinning done on the cupola or porch?

A. The top of the porch was covered with tin—the flat roof on it.

Q. 45. What tinner had charge of that job?

A. J. C. Strine; his work wasn't finished when I quit work there.

Cross-examined by Mr. Howson:

Cross-Q. 46. Which of the members of the board was it who spoke of the ram at Kissinger's not working well?

A. I don't recollect the particular one—not at that meeting I have reference to.

Cross-Q. 47. Name all the members of the board who you are willing to swear took part in that discussion.

A. That I wouldn't do; I can name one, but I wouldn't name them all.

Cross-Q. 48. Name the one.

A. E. W. Wise.

Cross-Q. 40. Did you take part in the discussion yourself?

A. Nothing more than that I was opposed to the project; I thought that we could get along without it; that is, when it was first proposed; there was a motion made for Mr. Wise to be instructed to see what the cost would be to get a ram and report at the next meeting; it was so ordered.

Cross-Q. 50. Did you oppose on the ground that Mr. Kissinger's ram didn't work well?

A. No, sir, it was the cost; I thought we were not able to stand it; our purse was light.

Cross-Q. 51. Can't you give us the name of any other member who took part in the discussion, and what ground that member took on the subject?

A. I think Mr. J. Funk had something to say; he merely stated to see what the thing would cost first.

Cross-Q. 52. Do you mean by that, that Mr. Funk opposed the project on the ground of the expense, or what?

A. No; I think it was because he hadn't much idea what the expense would be.

Cross-Q. 53. In point of fact, you don't remember what, if anything, Mr. Funk did say on the subject, do you?

A. Nothing more than what I have stated.

Cross-Q. 54. Name any other member who took part in that discussion, and what he had to say on the subject?

A. That I can't say.

Cross-Q. 55. When and where did you become acquainted with Mr. George W. Kissinger?

A. I think in 1869, at Marysville.

Cross-Q. 56. Referring to the time when you went up to Mr. Kissinger's and indulged in watermelons; who was with you?

A. William Taylor.

Cross-Q. 57. Did you and he go up there by invitation?

A. Yes, sir.

Cross-Q. 58. Had that invitation been given on that same day, or on some previous day?

A. Several days before that.

Cross-Q. 59. Who had given the invitation—Mr. Kissinger, or some member of his family?

A. Mr. Kissinger himself.

Cross-Q. 60. Were there any other parties up there at the time on a similar invitation to indulge in watermelons?

A. Not with us.

Cross-Q. 61. You have referred to hearing the beat of the ram, which you say was when you were at work at Mr. Kissinger's place. From whereabouts on the place did you hear that?

A. When I was working on top of the cupola of the house.

Cross-Q. 62. Did you notice it on more than one occasion while you were at work there at Mr. Kissinger's?

A. I think I did.

Cross-Q. 63. Do you think you heard it quite plainly all the time you were at work there?

A. I could hear it very plainly when I worked on the cupola of the house.

Cross-Q. 64. How long were you at work on that cupola, and when was it, with reference to the date of the charge in the book which you have produced here?

A. I don't suppose I worked on it over three days; the cupola was the last work done by me; I made the porch ready for the tinner, and then left the porch and worked at the cupola.

Cross-Q. 65. Then was it the three days immediately preceding the 15th of September, that you were at work on the cupola?

A. There is something else will come in there—there was a storm came up when I was roofing the cupola—a hurricane—when the roof was part on; Mr. Kissinger had to cover the balance of the roof with his tent-cover to keep the water out; I don't think I worked any more after that time.

Cross-Q. 66. You haven't answered my question; I want to know whether the three days which you think you worked on that cupola were the three days immediately preceding the 15th of September?

A. The work I done there certainly is from the 1st of September until the 15th; I lumped the work, or rather the days, and gave the amount of them.

Cross-Q. 67. When were you last on the Draper farm?

A. I don't think I was ever there after I quit work—not 'till the fall of 1878.

Cross-Q. 68. What time in the fall of 1878, and what were you doing there?

A. I think it was October; I hauled coal there for Mr. Zimmerman, who lived in one part of Mr. Kissinger's house.

Cross-Q. 69. Did Mr. Zimmerman buy that coal from you, or did you simply haul it for him; and if the last was the case, from what place did you haul it?

A. He bought it from me; I hauled it from my coal-yard.

Cross-Q. 70. How much coal was that, and was it cash or credit?

[*Objected to as new matter not referred to in the examination-in-chief.*]

A. He got several tons and paid once a month—I guess every pay-day.

Cross-Q. 71. This transaction doesn't appear on the book which you have produced, does it?

[*Same objection.*]

A. Partly, on page 301; I didn't know his name and marked it in lead pencil at the top of the page at the time.

LEWIS W. BRABSON.

(Deposition suspended until Tuesday, March 4, 1884, the witness signing his deposition at the request of respondents' counsel as a precaution.)

Adjourned until Monday, March 3, 1884, at 10, A. M.

March 4, 1884, 10, A. M.

Examination resumed; present, Mr. Howson for complainants, and Mr. Hill for respondents.

Cross-examination of Mr. Lewis Brabson continued by Mr. Howson:

[*Complainants' counsel requests the examiner to copy upon the record the book-entries referred to in answer to cross-question* 71*; the entries are as follows:*

"Zemman (in lead pencil) 301

1878	Oct 21 to 1–2 ton coal	2 18	
	" 25 by cash		2 18
	Dec 7 to 1–4 ton coal	1 13	
	" 28 " 1–4 " "	1 13	
1879	Jan 15 by cash in full		2 26
	Feb 13 to 1–4 ton coal	1 13	
	March 14 by cash in full		1 13
	Ap 1 to 3 bu coal	48	
	May 15 by cash		48
		48	48"]

Cross-Q. 72. I see from these book-entries that there were five deliveries of coal to Mr. Zimmerman; did you deliver all these loads of coal at his house or the house of Mr. Kissinger in which he was living?

A. I had a teamster hauling for me; I think I was along with him but two loads, as near as I can tell—as near as I remember; Kissinger may have taken some coal for him from my coal-yard, as he was often in town with his team.

Cross-Q. 73. Is it your recollection that the two loads that you personally went there with were the first and second, or the first and one of the later loads? How is your recollection on that point?

A. That I couldn't remember.

Cross-Q. 74. Whereabouts on the premises, if you know, was this coal put in?

A. At the west corner of the dwelling; that is, at the back part of the house. It was throwed into a skiff or boat that lay on the ground outside of the house.

Cross-Q. 74½. When next after this delivery of coal to Mr. Zimmerman had you any occasion to visit the Draper farm?

A. I don't think I was ever there, to the best of my recollection, till Mr. Kissinger had his sale. I was there a short time on that day. I mean the sale of Mr. Kissinger's effects at the time he was moving away. I couldn't give the dates.

Cross-Q. 75. Then, if I understand you, you haven't been on the Draper farm since that time?

A. Not nearer than passing on the public road, to the best of my recollection.

Cross-Q. 76. Referring again to the time when you went up to Mr. Kissinger's with Mr. Taylor to try some watermelons; where was it that Mr. Kissinger gave you the invitation to come up there for that purpose?

A. I wish to say that on reflection I am not quite certain whether it was Mr. Taylor or Mr. William Barley. I am certain it was one or the other. I couldn't say positively the place where he gave me the invitation. It might have been near my shop.

Cross-Q. 77. What is Mr. Barley's business, and where does he live now, if you know?

A. He was a carpenter; he moved to Cumberland county.

Cross-Q. 78. When was it that he moved to Cumberland county?

A. I couldn't say.

Cross-Q. 79. Is Mr. William Taylor still living at Marysville; if not, where, if you know, is he now living, and when did he move away from Marysville?

A. I have been informed that he moved to Phillipsburg; it is in the neighborhood of two years; I couldn't give you the date.

Cross-Q. 80. What is you present recollection as to your companion on that occasion—whether it was Mr. Taylor or Mr. Barley?

A. In my opinion it was Taylor.

Cross-Q. 81. Is it your recollection that you and Mr. Taylor were together, and that Mr. Kissinger invited you both up there at the same time and place?

A. We were not together.

Cross-Q. 82. On the Sunday you went up, where did you and Mr. Taylor meet?

A. That I can't remember.

Cross-Q. 83. Do you recollect whether you walked up there together, or whether you met at Mr. Kissinger's place, or how that was?

A. We were together when we entered the yard from the main road; I can't remember where we started from; it was somewhere on the valley road, but I couldn't give no point.

Cross-Q. 84. When do you say it was that this visit to eat watermelons occurred?

A. I can't remember any dates of the time this was; I don't pretend to say.

Cross-Q. 85. I understand that you became acquainted with Mr. Kissinger in or about the year 1869. Were you on what you would call intimate terms with him before you did the job on the cupola and the porch of his house, which job I understand came to you from Mr. Taylor?

A. I would say on the best of friendly terms.

Cross-Q. 86. Referring now to the time when you were taking your meals at Mr. Kissinger's house while at work there, and especially to the time when, as you have stated, there was a conversation about bringing water from the spring, and about the water delivered by the ram being too warm, will you please give us the names of all the persons whom you recollect to have been present when that conversation occurred—either persons who were, or persons who were not, members of Mr. Kissinger's family?

A. I can only give you the names of a few: Mr. Kissinger and his wife; I think there were some children, but I couldn't give their names.

Cross-Q 87. Then, if I understand your last answer, you don't recollect any one as having been present outside of Mr. Kissinger's family and yourself; is that it?

A. I had worked there some time at work on the cupola alone. I have no recollection of any other but what I told you. I couldn't say whether the daughters were in there or not.

Cross-Q. 88. By whom, and when first, Mr. Brabson, were you asked what, if anything, you recollected about this business of the ram on the Draper farm?

A. That I can't remember. I was never asked very much concerning the ram—as regards that. I think it was 'Squire Fenn. I won't say positively.

Cross-Q. 89. Assuming that it was 'Squire Fenn, will you tell us about when it was, according to your present recollection, that he first spoke to you on the subject?

A. It was, I think, some time between the early part of last fall and the holidays; I couldn't give you no date.

Cross-Q. 90. You know, I suppose, that during the last few months there has been quite a good deal of talk about this ram on the Draper farm, in and around Marysville?

A. Only by hearsay.

Cross-Q. 91. When you were taking meals at Mr. Kissinger's house, were any other mechanics doing the same?

A. None that I know of, only William Taylor.

Cross-Q. 92. When were you first summoned to attend here, Mr. Brabson, and on what day were you first told to attend?

A. I think it was on last Thursday morning. My child was sick, and I told them I couldn't attend on that day. I told them I could come on Saturday morning if that would suit. He said he would see and let me know. He came on Friday morning, and said they wanted me on that day. My child was still sick, and I told him I couldn't come before Saturday morning. He said he would let me know on Friday evening whether it would suit, but unless I heard from him I should come down. I didn't hear from him, and so I came down on Saturday morning.

Cross-Q. 93. By whom were you summoned?

A. O. H. Miller.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 4th day of March, 1884.

FRED. M. OTT,
Examiner.

LEWIS W. BRABSON.

MONDAY, *March* 3, 1884, 10, A. M.

Examination resumed; present, Mr. Storrow for complainants and Mr. Jacobs for respondents.

GEORGE A. MAY, *being produced, sworn, and examined, saith:*

Examined by Mr. Jacobs:

My age is 30; I reside at Eberly's Mills, Cumberland county, Pennsylvania; I am a days' laborer.

Q. 1. When did you first begin to reside at Eberly's Mills, or in the neighborhood?

A. In 1874.

Q. 2. What time in 1874?

A. About Christmas.

Q. 3. With whom did you reside there?

A. Jonathan Fry.

Q. 4. How long did you then continue to reside with him?

A. One year.

Q. 5. Then, as I understand from your answer, you went to reside with

Jonathan Fry about Christmas of 1874, and continued with him until about the same time in 1875; is that correct?

[*Objected to as leading.*]

A. Yes, sir.

Q. 6. Were you employed by Jonathan Fry to work for him at the time you lived with him?

[*Objected to as leading.*]

A. Yes, sir.

Q. 7. With whom did you next live and work after you left Jonathan Fry?

A. Charles Matthias.

Q. 8. Where did he live and when did you go to work for him?

A. In York county, near Manchester; I went to work for him in March, 1876.

Q. 9. What were you doing and where were you living from about Christmas, 1875, to March, 1876, when you went to work for Mr. Matthias?

A. I was around visiting my friends.

Q. 10. How long did you continue to live with and work for Mr. Matthias?

A. About nine months.

Q. 11. What did you do then?

A. I worked in the mill at Eberly's Mills.

Q. 12. For how long?

A. Two months.

Q. 13. Where did you go next and what did you do?

A. To Jonathan Fry; I hired with him.

Q. 14. How long did you live with him the second time?

A. One year.

Q. 15. Where did you go next and what did you do?

A. To Samuel M. Hertzler's; I hired there.

Q. 16. How long were you hired by Mr. Hertzler?

A. Two years.

Q. 17. How were you hired by Mr. Hertzler during those two years?

A. By the year.

Q. 18. Did you or not continue to work for Mr. Hertzler at odd times after the expiration of those two years for which you were hired?

A. Yes, sir.

Q. 19. Were you ever in the shop of Daniel Drawbaugh at Eberly's Mills, and if so, when first?

A. In 1875.

Q. 20. What time of year?

A. In March.

Q. 21. Where were you living at the time?

A. At Jonathan Fry's.

Q. 22. If any business took you to Drawbaugh's shop in March, 1875, will you please state what it was?

A. I had taken a razor there to get it ground; it was to be ground by Daniel Drawbaugh.

Q. 23. Did you deliver the razor to Daniel Drawbaugh himself?

A. Yes, sir.

Q. 24. Where did you deliver it to him?

A. At his house.

Q. 25. Did you get it back from Mr. Drawbaugh himself?

A. Yes, sir.

Q. 26. Where were you and he when he returned it to you?

A. Down at the shop.

Q. 27. How long had it been in his possession from the time you gave it to him to grind until you got it back from him at his shop?

A. About two weeks.

Q. 28. On what day of the week was it that you got it from him?

A. On Sunday.

Q. 29. Was any one else at the shop at the time?

A. No, sir.

Q. 30. About how long did you remain with Mr. Drawbaugh at the shop at that time?

A. About two hours.

Q. 31. Did he or not show you any of his inventions at that time?

A. He did.

Q. 32. Please state what he showed you.

A. Talking-machines.

Q. 33. Did he or not on that occasion talk through any of his talking-machines to you?

A. He did.

Q. 34. Whilst the talking was going on through the machines, where were you and where was he?

A. I was at the south side of the building and he was at the north.

Q. 35. In the same, or different rooms?

A. Different rooms.

Q. 36. On the same, or different floors?

A. On the same floor.

Q. 37. On which floor?

A. On the third floor, counting the basement as a floor.

Q. 38. Do you know what work was carried on at that shop on week days at that time?

A. The axle work was going on.

Q. 39. How do you know that?

A. Dan Drawbaugh told me.

Q. 40. Do you mean that he told you at that time, or at some other time?

[*Objected to as leading.*]

A. At that time.

Q. 41. Explain how he came to tell you at that time that the axle work was there going on at the shop.

A. I seen axles there lying in the shop; I asked him what they were for.

Q. 42. Will you look at the instruments now spread before you on the table, and say whether or not you can identify any of them as the instruments shown you by Daniel Drawbaugh at the visit to his shop, concerning which you have testified.

[*The instruments on the table are* "*A*," "*B*," "*C*," "*C Reproduced*," "*D*," "*E*," "*F*," "*G*," "*H*," "*I*," "*L*," *and* "*M*," *and* "*O*."]

A. Yes, sir; here is three [indicating "D," "E," ".F,"], and this one [indicating "H."].

Q. 43. Which, if any, of those instruments, did he use to talk to you with on that occasion?

[*Objected to as leading.*]

A. Those two, [indicating "D" and "E."]

Q. 44. Could you or not understand through the talking-machines what Mr. Drawbaugh said to you?

[*Same objection.*]

A. Yes, sir; I could.

Q. 45. Did you or not answer back through the talking-machines to him?

[*Same objection.*]

A. I did.

Q. 46. Did you use the same instrument at which you listened or another instrument to answer back to him?

A. The same.

Q. 47. Do you remember any part of that conversation that took place between you and Mr. Drawbaugh through the instruments?

A. I do.

Q. 48. Please state what it was.

A. He sang notes.

Q. 49. Did he or not also speak words through the instrument to you?

[*Objected to because it is leading, and because the witness has already testified to all that he remembers on the subject of what has passed through the telephone at the alleged visit.*]

A. He did.

Q. 50. Did you understand them?

[*Same objection.*]

A. I did.

Q. 51. Can you give us any of the words that he spoke through the instrument to you at that time?

[*Same objection.*]

A. Yes, sir; he said that I shall hold my one ear shut and see if I can hear it any plainer.

Q. 52. Did you do so?

A. Yes, sir.

Q. 53. Did you or not hear it any plainer after holding your one ear shut?

A. I heard it plainer.

Q. 54. What was there to make you hear less plainly before holding your one ear shut than afterwards?

A. The water running into the trunk at the side, that emptied out—outside of the shop.

Q. 55. You have said that you answered back to Mr. Drawbaugh through the talking-machine. Do you remember anything that you said to him through it?

A. Yes, sir; I told him that I could hear it more plainly.

Q. 56. Did Mr. Drawbaugh, on the occasion that you have spoken

of, use any other talking-machine to talk with you besides the two marked "D" and "E," which you have pointed out?

A. No, sir; he didn't.

Q. 57. When you first saw instrument "H," whereabouts in Drawbaugh's shop was it?

A. It was to the south side.

Q. 58. Was it fastened against something, or standing, or lying upon something, or how was it when you first saw it?

[*Objected to as leading.*]

A. It was fastened against the boards.

Q. 59. Did Mr. Drawbaugh call your attention to it, or did you see it without your attention being called to it?

A. I seen it without my attention being called to it.

Q. 60. Did you see it before or after Mr. Drawbaugh showed you and talked through these two instruments "D" and "E"?

A. I seen it before.

Q. 61. Did you or not examine it closely?

A. Not particularly I didn't.

Q. 62. Did you handle it any?

A. No, sir.

Q. 63. Did Mr. Drawbaugh make any explanation of it to you?

A. Not that I mind.

Q. 64. Where was this instrument "F" when you first saw it?

A. It was lying on a bench.

Q. 65. Have you ever been in Mr. Drawbaugh's shop since the Sunday when you got your razor from him?

A. Yes, sir.

Q. 66. Once, or more than once?

A. I have been in several times.

Q. 67. Was the time you got your razor the only time that you ever saw talking-machines in that shop?

A. Yes, sir.

Q. 68. How soon after the first visit to Mr. Drawbaugh's shop were you there again?

A. I was there in the fall of 1875.

Q. 69. Were you, or not, there at any time whilst you lived with Jonathan Fry the second time?

A. I was.

Q. 70. When you lived with him the second time, did he or did he not live at the same place as when you lived with him the first time?

A. He lived at the same place as when I lived with him the first time.

Q. 71. How far was that from Drawbaugh's shop?

A. I can hardly tell just how far; it was about a mile; it was on William R. Gorgas' farm.

[*The whole deposition objected to by Mr. Storrow as not in rebuttal, and cross-examination, de bene esse.*]

Cross-Q. 72. Was it in the tenant house?

A. Yes, sir.

Cross-Q. 73. When you first worked for Fry, who lived in the Gorgas mansion on that farm?

A. Mr. William R. Gorgas.

Cross-Q. 74. When you went to work for Fry the second time, who lived in the mansion house?

A. Mr. Gorgas.

Cross-Q. 75. At one time Mr. Gorgas had a sale and moved to Harrisburg. Was that while you were living with Fry the second time?

A. Yes, sir; in the fall of 1877.

Cross-Q. 76 Where are you living now?

A. At Eberly's Mills.

Cross-Q. 77. Whose house are you living in?

A. Daniel Fettrow's.

Cross-Q. 78. Is that the house that Mr. Fettrow bought of Daniel Drawbaugh?

A. Yes, sir.

Cross-Q. 79. How long have you been living in Daniel Fettrow's house?

A. It will be four years in April.

Cross-Q. 80. That is, you have lived there since April, 1880?

A. Yes, sir.

Cross-Q. 81. Do Daniel Fettrow and his family live in the house, too?

A. Yes, sir.

Cross-Q. 82. Are you any relation of Fettrow's?

A. No, sir.

Cross-Q. 83. Any connection of Fettrow's?

A. I am his son-in-law.

Cross-Q. 84. When you went to live in that house in April, 1880, whom were you working for?

A. Samuel Hertzler.

Cross-Q. 85. Whom did you work for through the rest of the year 1880, from April till into December?

A. I worked amongst the farmers.

Cross-Q. 86. Just days' work, or were you hired by the month anywhere?

A. Day's work.

Cross-Q. 87. Whom did you work for in 1881?

A. I worked for Fry a little while, and on the road for the township.

Cross-Q. 88. What other work did you do in 1881?

A. I can't just recollect.

Cross-Q. 89. How long did you work for Fry in 1881?

A. I just can't hardly tell—perhaps two or three days and perhaps a week.

Cross-Q. 90. How long did you work on the roads in 1881?

A. I think it was only two days that year.

Cross-Q. 91. Can't you recollect whom else you worked for that year; or what other work you did?

A. I plowed corn-ground, helped to load manure, and helped to harvest at Mr. Samuel M. Hertzler's.

Cross-Q. 92. Who else besides Mr. Hertzler did you work for in 1881?

A. I just can't recollect who.

Cross-Q. 93. How long did you work for Mr. Hertzler in 1881?

A. I just can't tell; I helped to put his harvest away.

Cross-Q. 94. Was it two or three weeks, or two or three months that you worked for him in 1881?

A. It was two or three weeks.

Cross-Q. 95. How long did you work for Mr. Hertzler while you lived in the Fettrow house in 1880?

A. I worked one year.

Cross-Q. 96. As you only lived in the Fettrow house nine months in 1880, I think you must be mistaken. Please state again how long you worked for Mr. Hertzler while you lived in the Fettrow house in 1880.

A. I worked one year there.

Cross-Q. 97. Do you mean that you worked for Mr. Hertzler the whole of the year 1880?

A. Yes, sir.

Cross-Q. 98. By the day or by the month?

A. By the day.

Cross-Q. 99. And didn't work for anybody except Hertzler in 1880?

A. No, sir.

Cross-Q. 100. In your 85th answer, you said that from April, 1880, until the end of the year you worked amongst the farmers. You now say that you worked only for Samuel Hertzler. Which of those answers is correct?

A. I made a mistake. In 1880 I worked for Mr. Hertzler, and in 1881 I worked amongst the farmers.

Cross-Q. 101. Whom did you work for in 1882?

A. In 1882 I worked for Mr. Moffitt, the dentist, till about the last of May, and then I went to Mr. Renneker's and helped him through harvest and manure-hauling. Then I went back to S. M. Hertzler, and worked for him by the day. Then I worked for him on into the next year till after harvest, and then I went to fence-making with Mr. Jacob Grissinger till it froze up. After that I didn't do hardly anything all winter, but once in a while thresh a day or so amongst the farmers.

Cross-Q. 102. Where are you working now?

A. I ain't doing anything.

Recess until 2 P. M.

Cross-Q. 103. Has Mr. Daniel Fettrow got any son-in-law except you?

A. No, sir.

Cross-Q. 104. When were you married?

A. The 20th of April, 1879.

Cross-Q. 105. Where did you and your wife live the first year after you were married?

A. With my father-in-law, Mr. Fettrow.

Cross-Q. 106. And you have been living with Mr. Fettrow ever since April, 1879?

A. Yes, sir.

Cross-Q. 107. I suppose there has been a good deal of talk about this suit, in Milltown and the neighborhood, during the last two or three years.

A. I haven't heard a great deal.

Cross-Q. 108. What kind of work is going on in Drawbaugh's shop now?

A. At present I can't just say what.

Cross-Q. 109. Have you heard some talk this winter about enlarging the works there, and doing more work than they were doing?

A. No, sir.

Cross-Q. 110. What work did you do for Dr. Moffitt in 1882?

A. I went there to hire with him to do his work and then Mr. Moffitt went away, and Mrs. Moffit thought there would be no more work for me and so I went away.

Cross-Q. 111. He went away pretty suddenly and people didn't know where he had gone; isn't that so?

[*Objected to as immaterial, irrelevant, and otherwise incompetent.*]

A. Yes, sir.

Cross-Q. 112. His wife was alarmed about him and sent Squire Drawbaugh to hunt for him, didn't she?

[*Same objection.*]

A. That is more than I can say.

Cross-Q. 113. It was a number of weeks before he was heard of; wasn't it?

[*Same objection.*]

A. Yes, sir.

Cross-Q. 114. And then it was reported that he had got on a drunk and gone off in that condition, was it not?

[*Same objection and also as calling for hearsay and counsel for respondents protests against this most flagrant violation of the rules of evidence.*]

A. That I cannot say.

Cross-Q. 115. You heard that story about him, did you not, at the time?

[*Same objection.*]

A. I kind of heard something about him, but never paid much attention to it.

Cross-Q. 116. Where was Dr. Moffitt living at the time you worked for him?

A. He was living up the hill in Milltown, in a brick house.

Cross-Q. 117. Whose house?

A. It was said that he had bought it.

Cross-Q. 118. Does he still own it, or did he sell it to anybody afterwards?

[*Objected to as immaterial, irrelevant, and not proper cross-examination.*]

A. That I can't say.

Cross-Q. 119. Does he occupy it now?

[*Same objection.*]

A. He don't live there; no, sir.

Cross-Q. 120. Who next lived there after him?

[*Same objection.*]

A. Daniel Drawbaugh.

Cross-Q. 121. When did Daniel Drawbaugh take the house from him?

[*Same objection.*]

A. That I can't tell—just when.

Cross-Q. 122. As you have been living close by, I suppose you knew when Drawbaugh moved in, did you not?

[*Same objection.*]

A. No, sir; I couldn't just tell when. I had been working at S. M. Hertzler's all the time, and didn't get much idle time to go around when it was weather fit to work.

Cross-Q. 123. You pass that house in going from Fettrow's house, where you lived, to Hertzler's house, where you worked, do you not?

[*Same objection.*]

A. Yes, sir.

Cross-Q. 124. While you worked at Hertzler's from the time you left Dr. Moffitt's you lived at home and walked every day to Mr. Hertzler's and back, didn't you?

[*Same objection.*]

A. Yes, sir.

Cross-Q. 125. But you can't remember when Drawbaugh moved into that house; is not that the fact?

[*Same objection.*]

A. Yes, sir.

Cross-Q. 126. Whose house is the next one up the hill from the Fettrow house, and who lives in it?

[*Same objection.*]

A. It is owned by Squire Drawbaugh, I think; Mrs. Thompson lives in it.

Cross-Q. 127. Is Mrs. Thompson any connection of any of Daniel Drawbaugh's family or his wife's family?

[*Same objection.*]

A. She is Mrs. Dan Drawbaugh's mother.

Cross-Q. 128. The house she lives in is only a few feet from the Fettrow house, I believe; am I correct?

[*Same objection.*]

A. Yes, sir.

Cross-Q. 129. How long has she lived there?

[*Same objection.*]

A. Indeed, I just can't say whether it is a year this spring or whether it was a year last spring.

Cross-Q. 130. Who owns and occupies the next house?

[*Same objection.*]

A. There is some talk that Squire Jonn B. Drawbaugh and his brother Henry own it; Squire Drawbaugh's son George lives in it.

Cross-Q. 131. What house does John B. Drawbaugh live in?

[*Same objection.*]

A. He lives in with his son George.

Cross-Q. 132. The house that George Drawbaugh lives in is only a few feet from the Thompson house, I believe; is that the fact?

[*Same objection.*]

A. Yes, sir.

Cross-Q. 133. Who owns and occupies the next house on that side of the road?

[*Same objection.*]

A. There is none above George Drawbaugh's on that side of the road.

Cross-Q. 134. Then, if I understand, there is one field that extends from George Drawbaugh's house to the cross-roads; is that the fact?

[*Same objection.*]

A. Yes, sir.

Cross-Q. 135. And the Mr. Hertzler for whom you worked lives just on the other side of that cross-road?

[*Same objection.*]

A. Yes, sir.

Cross-Q. 136. When you lived at the Fettrow house and worked at Hertzler's, did you generally go out the back way and across that field, or did you generally go by the road in going from one place to the other?

[*Same objection.*]

A. I generally went out the back way and crosssd the field, because it was nearer.

Cross-Q. 137. The brick house in which Drawbaugh lives is just across the road from the one George Drawbaugh lives in, is it not?

[*Same objection.*]

A. It is across the road, but quite a trifle further up from George Drawbaugh's.

Cross-Q. 128. How long has John Drawbaugh lived in the house he is now living in?

[*Same objection.*]

A. That I cannot say.

Cross-Q. 139. Was he living in that house when you went to live in the Fettrow house; or was he living in the house Mrs. Thompson lives in?

[*Same objection.*]

A. He was living in the house where he lives now.

Cross-Q. 140. When were you first asked what you knew about Drawbaugh's talking-machine?

A. It was about two years ago; Dan asked me whether I didn't mind the time he showed it to me in 1875.

Re-direct by Mr. Jacobs;

Q. Q. 141. On your direct examination, I had in mind a question which I intended to ask you, but through inadvertence I omitted to do so; in your 24th answer you said that you delivered your razor to Daniel Drawbaugh himself at his house; in what house did he live at that time?

A. He lived in the house at the blacksmith's shop.

Q. Q. 142. The one in which you and Daniel Fettrow now live?

A. Yes, sir.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 3rd day of March, 1884.

FRED. M. OTT,
Examiner.

GEORGE A. MAY.

GEORGE CURTIS STRINE, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

My age is 39; I reside at Steelton, Dauphin county, Penna; I am a tinsmith.

Q. 1. Where did you live before you moved to Steelton?

A. At Marysville, Perry county, Penna.

Q. 2. When did you move from Marysville to Steelton?

A. In July, 1880.

Q. 3. How long have you been living at Marysville before you moved to Steelton?

A. Since September, 1865.

Q. 4. Did you follow the occupation of tinner while you lived at Marysville?

A. Yes, sir; pretty much all the time.

Q. 5. While you lived at Marysville did you know George W. Kissinger, who lived on Thomas Draper's farm on the valley road just back of the village of Marysville?

A. I did, and had some trade with him.

Q. 6. Did you do any tinning for him?

A. I did.

Q. 7. Did you keep any book account of your tinning job which you did for him?

A. Yes, sir; I had a running account with him.

Q. 8. Have you your account-books here containing that account?

A. I have.

Q. 9. Will you please produce them for examination, and allow the examiner to copy such entries from them as he may be directed so to do?

A. I will; here they are.

[*Witness produces three account books.*]

Q. 10. Are these three account books the regular books of account which you kept in connection with your business, and in which you entered from time to time a record of your business as it was transacted?

A. They are.

Q. 11. Referring to this book which I put my hand on, and which I will call book No. 1, will you point out your account with George W. Kissinger, so far as it is contained in this book?

A. Yes, sir; here it is on page 37; this is all the account with Mr. George W. Kissinger that is contained in this book.

Q. 12. Immediately under the account written in the book on page 37, I observe a bill contained on a piece of tinted paper fastened to said page 37, and purporting to be a bill of Lewis Heck against George Strine, amounting to fifteen dollars twenty cents, and dated August 15, 1877; what, if any, connection has this bill with George W. Kissinger's account?

A. That is a bill of lumber that Mr. Kissinger got from Lewis Heck through me, to erect a portico that was put to Mr. Draper's house where Mr. George W. Kissinger lived.

[*Respondents' counsel requests the examiner to copy upon the record at this point Mr. Strine's account with Mr. Kissinger, contained on page* 37, *and also, after so doing, to copy upon the record the Heck bill referred to in the last interrogatory; the account is as follows:*

"1876	George Kissinger			37
date				
Sep 18			page	
To 50 lbs	shorts		27	62
21 "	feed		29	63
26 "	oats		31	35
28 "	shorts		33	83
Oct 13 "	flour		41	85
Aug 15 "	lumber from heck		15	20
Sep 1 "	mds		134	26
" 10 "	lumber & cans		136	35
" 13 "	76 ft lumber		136	1.14
sep 27				
Oct 2 "	sundries		138	15.38
Carried to New Book				35,62
Oct 6	By 8 mellens			64
Sep 24 "	cash			5,00

1877
No 19 " cash - - - - - - - 3,00
8,64

The bill is as follows and is in lead-pencil–
"Geo. Strine
1877 To J. Lewis Heck Dr.
Aug 15
To 82 ft sct 12 pr - - - - - - 98
" 170 ft 2 " w. p. plk good at 30 p - - - 5,10
" 400 ft w pine bds at 20 - - - - - 8 00
" 32 ft w oak good at 35 - - - - - 1 12
Total 15,20 $15,20 "]

Q. 13. I observe that the entry in your book "Aug 15, lumber from Heck 15,20" corresponds to the bill of Mr. Heck dated August 15, 1877, for merchandise amounting to $15 20; is it the same transaction?

A. Yes, sir.

Q. 14. In Mr. Heck's bill what do the "sct," "plk," "bds," stand for?

A. I don't think I can answer that; it is their way of itemizing.

Q. 15. It was a bill for lumber, was it not?

A. Yes, sir.

Q. 16. In your account with Mr. Kissinger, on page 37, there is an item of "Sept 27" and right under the "Sept 27" is "Oct 2, sundries 15,39" and the reference which I take to be a reference to the day-book is to page 138; will you examine your day-book, p. 138, and see if there is any corresponding entry there of a charge against Mr. Kissinger, in order that we may know, if possible, what these sundries were?

A. I will.

[Witness refers.] There is a charge on page 138 against George Kissinger; here it is.

[*Respondents' counsel requests examiner to copy on to the record, at this point, the entry in the day-book on page* 138*; the entry is as follows:*
"138
1877
* * * * * * * * *
George Kissinger 16 × 5 in
5 × 11 "
Sep 27 } to 113 1–2 ft tin roof at 12 cts - - - - 14,19
Oct 2 } 160 shingels - - - - - - 1,20
15,39"]

Q. 17. I find from this entry in the day-book that the main portion of that charge of $15 39 was for tin roof. What was that tin roof put on to, and by whom was the work done?

A. It was put on a portico in front of Draper's house that Kissinger lived in on the farm. I did the work.

Q. 18. Who, if anybody, assisted you in doing the work?

A. I think I had a boy with me named George Rhoads, who assisted me off and on at times.

Q. 19. From these accounts which have been put in evidence, I judge that you furnished Mr. Kissinger with lumber and shingles for the work done at the house at that time, and also did the work of tinning the roof of the portico yourself. Am I correct about that?

A. Yes, sir.

Q. 20. Who did the carpenter work of putting up the portico and the cupola on the house at that time?

A. Lewis Brabson was one of the carpenters. I don't remember who he had with him, but there were two carpenters there.

Q. 21. This job of furnishing lumber and putting on the tin roof—what was your arrangement with Mr. Kissinger about paying for it? Was it to be a cash job, or was it to be on time?

A. I don't remember exactly whether it was to be net cash, but it was to be paid soon, and also was to be paid out of the rent money which he owed Mr. Draper.

Q. 22. At the bottom of the Kissinger account on page 37 of book No. 1, I find the words "carried to new book 35, 62"; if you have the new book here, will you please refer to it, and point out the account of George Kissinger as contained in it?

A. I have it here; it is on page 209 of the new book.

[*Respondents' counsel requests the examiner to copy on to the record the account with George Kissinger on page 209 of the new book, which book will hereafter be referred to as book No. 2. The account is as follows:*

"209

Kissinger George

1878	Page		1878	Page	
To Spout 20 - -	1	10	July 3 By balance from old		
July 3 to balance from old			book 37 - - -	8	64
book 37 - - -	35	62	by sider - - -	2	87
			" apels - - -		8
			" corn & tomats -		30
			" ½ peck peaches -		22
			" 1 bu tomats - -		40

" ½ bu peaches - -	87
" 1 peck peaches -	48
" ½ bu " - -	87
	14,73
by tomates - - -	8"]

Q. 23. I see by your accounts that on Nov. 19, 1877, Mr. Kissinger paid you $3 in cash, and afterwards, along apparently in 1878, or at least subsequent to July 3, 1878, turned over to you sundry articles such as cider, tomatoes, peaches, and apples until your books show a total credit to him of $14 81, against a total charge of $36 72, leaving an apparent balance of about $22 00 due from Mr. Kissinger to you; did you ever collect that balance, and if so, how?

A. I collected that by law; I sued Mr. Kissinger and Draper together as one; I sued them before Squire Fenn—the old gentleman—and he made the money for me.

Q. 24. Did you ever bring any other suit before Squire Fenn against Mr. Kissinger and Mr. Draper?

A. That was the only one.

Q. 25. Do you remember about when you brought that suit?

[*Objected to as calling for secondary evidence.*]

A. I don't remember.

Q. 26. According to your accounts here, the last item of cash that Mr. Kissinger paid you on this account was $3 paid Nov. 19, 1877; do you remember Mr. Kissinger's paying that $3?

A. I do.

Q. 27. Where did he pay you that $3.00 at that time?

A. At my shop in Marysville.

Q. 28. How came Mr. Kissinger to pay you that $3 00 at that time?

A. I had been after him for money a few days before that and he promised to pay me some money in a few days, as part pay on that tin work that I did for him; and this is the amount that he paid me—those three dollars—and the balance of my bill I collected through Squire Fenn.

Q. 29. That three dollars, then, was the last cash payment that he made until after the suit, was it?

A. Yes, sir.

Q. 30. You state in substance that he paid you that three dollars in consequence of a promise that he had made to pay you some money, a

few days before that, when you went after him for money. Where did you go after him for money at that time?

A. I went to his house.

Q. 31. Where did you find him?

A. I found him down at the barn.

Q. 32. Was it down at the barn that he promised to pay you some money in a few days, or where was it?

A. It was at his house.

Q. 33. After finding him at the barn, did you and he go together to his house, or how?

A. Yes; I met him at the barn, and we walked up together to the house, and then I approached him for the bill, and he made his promises at the house.

Q. 34. Did you ever see the hydraulic ram which Mr. Kissinger put in there on the Draper farm?—If so, how happened you to see it, and when was it?

A. I noticed it that day when I was there after him—noticed it in particular when I went across the run to the barn, and when I met him we both walked up towards the house, or rather walked back the same way I came—to the ram. I asked him when this was put in, as I had been handling that kind of work with my boss, William Matthews, in Mechanicsburg, Cumberland county, and felt somewhat interested, and asked Mr. Kissinger different questions about it. He told me, and answered my questions as near as he could, I suppose. I asked him in regard to its working, and he told me that it was out of order. He also went to explain the deficiency in the pipes, and the points of it; and I remember well of him telling me about the feed-pipe being made out of timber, such as round logs bored out, that they didn't work well; that they leaked at the connections or had bursted; that either Mr. Draper or Mr. Drawbaugh was to send pipes there for that purpose in place of those wooden pipes.

Q. 35. When you asked Mr. Kissinger at that time the question when the ram was put in, do you remember what his reply was?

A. He told me it was put in last fall; said he "It has been in since last fall;" he also told me who put it there.

Q. 36. When you were talking with him there that day about the pipes, was anything said about the pipe leading up from the ram towards the house; if so, what?

[*Objected to as leading.*]

A. He spoke about that pipe and told me that it was out of order also; that at first, when it was put in, it was second-hand pipe, and that the joints didn't fit well; that it leaked at the joints; he also got down beside the ram, I remember, and started it to work; it worked very much crippled-like; then after a time we walked up towards the house—up as far as to where it emptied; the pipe was then emptying about a stream of water the size of a good sized rye straw; it was throwing about that much water; this was about the 16th of November, 1877.

Q. 37. How do you fix it as the 16th of November, 1877?

A. It was only a few days before the 19th of November—it was less than a week, not more than three days.

Q. 38. When was the last time that you were ever down there at that ram on the Draper place?

A. I remember of being there once at a sale of his sometime after that—may be two years—eighteen months after that, anyhow; I think it was at his sale that he had before he left; I bought a cow, that is the reason I remember it; I bought a cow at the sale; I took no notice of the ram business, after him and I had talked about it that day.

Q. 39. You state that when Mr. Kissinger started the ram going that day it worked "crippled-like;" explain more particularly what you mean by that.

A. I mean that it worked very unregularly, not having feed enough to work it regularly; it would work for a short time—may be a dozen strokes or so—and then stop, and then in a short time it would drive again.

Q. 40. Did you ever, after that time, hear Mr. Kissinger say anything at any place with regard to the ram or pipes?

A. At Mr. Morley's store, in the village of Marysville, on an evening after that, I heard him complain about some pipes that he was expecting to have sent there by rail, that didn't come at the time they should have.

Q. 41. You spoke of having done something with rams under your boss when at Mechanicsburg; when was that?

A. It was in the years 1860 and 61.

Adjourned until March 4, 1884, at 10, A. M.

March 4, 1884.

Examination of Mr. George C. Strine by Mr. Hill continued:

Q. 42. Did you ever hear Mr. Kissinger say anything about whether the ram which he had in on the Draper place was or was not of the right size to do its work properly?

[*Objected to as leading.*]

A. Nothing more than that I mind of making the remark that I thought the ram was most too light, from my experience of them, to throw the water properly to such a distance; and he made the remark that there was something that wasn't right about the ram; that it didn't work satisfactorily all the time they had it there; there was other remarks made but I can't refer to them—trifling points mentioned, I suppose.

Q. 43. At what time was that remark made about the size of the ram?

A. At the same time that I learned of the ram—at the time I mentioned before, about the 16th or 17th of November; I go by the date in the book on that point because I remember of it.

Q. 44. Did Mr. Kissinger say anything about getting a larger ram?

[*Objected to as leading.*]

A. Since I have considered that matter over, as near as I recollect those words that were spoken about the size of it, I think were just as I have stated them this morning.

Cross-examination by Mr. Howson:

Cross-Q. 45. I notice in the account, a copy of which was placed on the record in connection with your answer to interrogatory 12, that the figures of the last three items on the debit side, and the footing of the debit column, and the words "carried to new book," appear to be in a different ink and a different handwriting from the remainder of the account; when and by whom were they made in the book?

A. This last writing—"carried to new book"—is not my hand; I think it was done in Mr. Theo. Fenn's office—the old gentleman—at the time of the suit, or before the suit; I couldn't give the date.

Cross-Q. 46. Have you the same answer to make as to the entries in the new book copied on to the record in connection with your answer to interrogatory 21? I refer now to the entry on the debit side, reading

"July 3, to balance from old book," and the entry on the credit side of the same date, "by balance from old book."

A. Yes, sir; they were made at the same time that the entries were made in the old book; I think that William Fenn did it in his father's office.

Cross-Q. 47. How came these entries to be made by Mr. Fenn, and how came the books at the time the entries were made to be in his possession?

A. I brought suit against Mr. George Kissinger and Mr. Draper before Squire Fenn—the old gentleman—for the balance due me on that account.

Cross-Q. 48. Give us your best recollection as to the time when you took the books to Mr. Fenn for that purpose, and how long the books remained in his possession.

A. My books show July 3, 1878, on the debit and credit side; they didn't remain longer than what it took us to add up the account and fix the matter; it was done the day I brought suit against the party, as near as I remember.

Cross-Q. 49. Then, as I understand you, it was on or about July 3, 1878, that you brought this suit against Messrs. Kissinger and Draper, according to your present recollection?

[*Objected to on the ground that the witness has already testified, both in direct and cross-examination, that he couldn't give the date.*]

A. I wouldn't be able to say when that was.

Cross-Q. 50. You haven't, then, the slightest recollection as to either the year or the time of the year at which you brought that suit against Messrs. Kissinger and Draper and went to Squire Fenn for that purpose; is that it?

A. I wouldn't state any time because I would certainly be wrong.

Cross-Q. 51. Are the entries in the book No. 2, which have been copied on to the record in connection with answer to interrogatory 22, all in your own handwriting with the exception of the balances carried over from the previous page?

A. They are.

Cross-Q. 52. Were those entries which are in your handwriting made before or after the others, which you think are in Mr. Fenn's handwriting?

A. I am not able to say.

Cross-Q. 53. Of the entries in your handwriting, which were the first made—those on the credit side of the account, or the single item on the debit side—I refer to book No. 2.

A. I couldn't remember.

Cross-Q. 54. I notice on the credit side the first item in your handwriting is, "by cider 2 87;" when was it you got that cider, and where was it delivered to you?

A. It was delivered at my house, but I couldn't refer to the date of any of that credit.

Cross-Q. 55. Do you recollect whether those credit entries were made at one and the same time or at different times?

A. On different times; just as he came into market—into town.

Cross-Q. 56. They refer, don't they, to produce delivered to you in different years?

A. I couldn't say whether it was one year or two; it was in the fruit season.

Cross-Q. 57. Examining the entries and taking into consideration the different character of the articles and the apparent order of their delivery, do you understand these entries to refer to transactions in one season or in different seasons?

[*Objected to as not calling for evidence, but for guess-work, the witness having already testified that he couldn't say from memory whether those articles were obtained in one or more than one season, and the articles being such as might or might not be delivered in the same year.*]

A. It probably might have happened in one season—that portion of it.

Cross-Q. 58. Then you think it is likely, do you, that in one season there was a delivery of cider before the delivery of sundry articles, such as corn, tomatoes, and peaches?

[*Same objection; the question calls for no fact but for mere guess-work, and is entirely incompetent.*]

A. I couldn't say.

Cross-Q. 59. Referring to the item on the debit side of book No. 2, the entry being "to spout 1 10," give us your recollection as to what that transaction was, and when it occurred.

A. I don't remember where it was used; I can't remember when it occurred.

Cross-Q. 60. You don't even recollect the year?

A. No, sir.

Cross-Q. 61. Do you recollect whether you delivered it at Mr. Kissinger's place, or whether somebody called at your place and got the spout; and if the latter, who it was?

A. I couldn't say.

Cross-Q. 62. Do you remember whether the delivery of the sundry articles of produce with which you have credited Mr. Kissinger on your book No. 2, occurred before or after this suit with Mr. Kissinger and Mr. Draper, which you have mentioned, and if the former, how long before that suit?

A I couldn't tell you how long before, but it happened before; I can't remember having an account with any of the parties since.

Cross-Q. 63. When you brought the suit, had it not been quite a long time since you received anything from Mr. Kissinger on account of the debt, either in money or in produce?

A. I don't remember.

Cross-Q. 64. Can you tell us how or about how long before bringing that suit you made any demand on Mr. Kissinger for any money on account of the debt?

[*Objected to as immaterial.*]

A. I don't remember.

Cross-Q. 65. Did you not ask Mr. Kissinger for money on account of that debt quite frequently?

A. I looked after it occasionally.

Cross-Q. 66. You can't from memory give us an idea, can you, of how many times you visited Mr. Kissinger to try to get something from him on account of that old debt?

A. I met him frequently in the town and I remember it was my errand at the time I called at his house.

Cross-Q. 67. Was that before or after he had delivered certain small amounts of produce to you on account of that debt, according to your recollection? I refer to the errand to his house referred to in your last answer.

A. It was about the time.

Cross-Q. 68. Have you any account of the produce delivered, in any book other than the ledger which you have produced here?

A. No, sir.

Cross-Q. 69. Your recollection, if I understand you correctly, is that

these entries of produce delivered, in ledger No. 2, were made by you from time to time as the articles were delivered, and at or about the time of their delivery; is that so?

A. Yes, sir.

Cross-Q. 70. Can you and will you produce any original entry of which the item in your ledger No. 2 "to spout 1 10" is a transcript?

A. I can't see any account of it in this day-book; there must have been another day-book; I will produce it if I can find it.

(Deposition suspended until 7, P. M.)

Recess until 2.15, P. M.

Cross-examination of George C. Strine, by Mr. Howson, continued at 7, P. M., March 4, 1884. Witness produces the book inquired for in Mr. Howson's last interrogatory, and refers to an entry on page 20, dated Feb. 26, 1878, "George Kissinger to 11 feet spout 1.10."

Cross-Q. 71. Have you any recollection how long it was after making this entry in your day-book or journal that you transferred it to your ledger No. 2?

A. I haven't any recollection of it.

Cross-Q. 72. And you haven't the slightest recollection whether this charge for spout was made before or after the credits to Mr. Kissinger for produce delivered to you; is that the case?

A. Yes, sir; that is the case, and I don't remember what it was used for.

Cross-Q. 73. Can you tell us who first asked you within the last year about your recollection of this ram of Kissinger's, and when it was that you were first asked?

A. I couldn't tell you when it was; William Fenn spoke to me once about it.

Cross-Q. 74. Didn't Mr. Fenn speak to you about it more than once?

A. He did not.

Cross-Q. 75. But you have no recollection when that once was?

A. It was last summer or fall; he merely mentioned it to me; that was all; that was the most I thought of it until I was called to explain what I did know about it.

Cross-Q. 76. What is your best recollection about the length of time that elapsed between the time of Mr. Kissinger's paying you the $3 00 and the time of your bringing suit against him?

A. I couldn't tell; I remember about the time I received the money,

but I can't remember what length of time passed before I sued him for the balance; Mr. Fenn's docket would show that.

Cross-Q. 77. When was it—what year, and about what time of year—that you heard Mr. Kissinger at Mr. Morley's store complain about some pipe not coming when expected?

A. All I can remember about it is that it was in the latter part of the summer, but what summer I can't mind.

Cross-Q. 78. Have you any clear recollection as to how long it was before or after your purchase of the cow from Mr. Kissinger?

A. I couldn't remember—can't tell you, sir.

Cross-Q. 79. I notice in the account in your ledger No. 1 a credit of five dollars paid on account by Mr. Kissinger; have you any recollection as to when that five dollars was paid, where it was paid, and the circumstances attending the payment of it?

A. I haven't.

Cross-Q. 80. When you were on Mr. Kissinger's place and had the talk with him about the ram: was the ram at work then—running?

A. The ram was out of repair; it was in bad condition.

Cross-Q. 81. Do you mean by that that it was not running, or that it was running but not in good order?

A. It was not running, but it would run by giving it a little help, by raising the valve up—would run for half a dozen strokes or so.

Cross-Q. 82. When you were doing the tinning work at Mr. Kissinger's place, did you take any of your meals there during the time you were at that work?

A. No, sir.

Cross-Q. 83. When, according to your recollection, were you last on the Draper farm?

A. In the year 1879, I guess, was the last that I was there that I remember.

Cross-Q. 84. What were you doing there at that time?

A. I was on the mountain part gathering roots; such as sassafras, tea root, and small chestnut trees.

Cross-Q. 85. Was that before or after you went on to Mr. Kissinger's place to attend a sale?

A. It was after.

Cross-Q. 86. How long after, according to your present recollection—one year or two years?

A. I can't remember.

Cross-Q. 87. Was your purchase of the cow before or after the suit which you brought against Mr. Kissinger and Mr. Draper?

A. If I mind right it was after; I wouldn't be able to say positively.

Cross-Q. 88. How long after, according to your present recollection?

A. I can't tell you.

Cross-Q. 89. You have told us that you looked after this money that Mr. Kissinger owed you occasionally; did he make promises at different times to pay you something on account of that bill?

A. I don't recollect what satisfaction he gave me.

Cross-Q. 90. You don't recollect, do you, how often you visited him to try to get some money on that bill?

A. I do not; I would meet him in town frequently and would probably make some remarks about it; I don't remember of calling at his house to see him but the one time.

Cross-Q. 91. Do you undertake to say positively that during the considerable length of time that money was owing, you did not visit his house more than once to try to collect it?

A. That is all that I remember. I had every chance to see him in town that I needed.

Cross-Q. 92. Where was it that Mr. Kissinger made you the promise to pay something on account, that you have referred to in your direct examination?

A. It was by his house after we walked up from the ram.

Cross-Q. 93. And when did you next visit him on the subject after that visit?

[*Objected to as a mere repetition of half a dozen previous interrogatories that have been fully answered.*]

A. I gave it into Mr. Fenn's hands; he made the balance of the money for me.

Cross-Q. 94. Then, between that time and the putting of it into Mr. Fenn's hands, you did not bother yourself about the matter; is that it?

[*Objected to as unfair cross-examination and misrepresentation of the witness' previous testimony, and also as having been already fully explained over and over again by the witness.*]

A. Yes, sir—did not bother Mr. Kissinger.

Re-direct by Mr. Hill:

Q. Q. 95. I understand you that at that time when you saw the ram

and went up by Mr. Kissinger's house, Mr. Kissinger promised to pay you some money in a few days on account of the work, and that two or three days afterwards he came down to your place and paid you the three dollars which are credited on your book as of November 19, 1877; is my understanding correct?

[*Objected to as leading.*]

A. That is just as I have told you—just as I have stated.

Q. Q. 96. When Mr. Kissinger came down and paid you three dollars, did he pay you as much as you had been led to expect from him at that time, or not?

[*Objected to as not reëxamination.*]

A. I expected he would pay me more.

Q. Q. 97. And were you a good deal disappointed in getting such a driblet from him?

[*Same objection and as leading.*]

A. Well, considerably.

Q. Q. 98. And that was the last cash that Mr. Kissinger ever paid you in person, was it?

[*Same objection.*]

A. It was the last I remember.

Q. Q. 99. Referring to your ledger No. 2, p. 209, and particularly to the produce credited there on George Kissinger's account, commencing with the words "by cider," and ending with the words "by tomatoes," I notice that the produce credits are all entered without date, and with the same ink, and in the same handwriting, and look as though they were all entered at the same time; how do you account for this?

[*Objected to as leading and altogether incompetent, as embodying argumentative statements of counsel which are not evidence, and as evidently designed to lead and induce the witness to contradict or qualify his sworn statements already made.*]

A. Those accounts were kept by George Kissinger as he delivered the produce; and then afterwards he handed his account to me, which I copied off right at one time.

Q. Q. 100. Have you any recollection as to whether that produce was furnished by Mr. Kissinger to you or your family in the year 1877, or the year 1878, or in the year 1879?—I mean in any one of those years instead of the others.

[*Objected to as assuming that the produce was delivered in some one year which the witness has not testified, but on the other hand has testified that he does not remember whether the articles were delivered all in one year or in different years; and further objected to because the witness has already distinctly sworn that he has no recollection in what year or years the articles were delivered; and further objected to as calling for guess-work.*]

A. I couldn't say which year.

Q. Q. 101. You have testified that you are unable to fix the time when you brought suit against Mr. Kissinger and Mr. Draper. Mr. Kissinger moved away from Perry county to Maryland about the 1st of April, 1880; what is your recollection as to how long the suit was brought before Mr. Kissinger moved away to Maryland?

A. It might have been six months; I wouldn't be able to say positively about it.

Q. Q. 102. How did you happen to get service on Mr. Draper—were you watching for him?

[*Objected to as not reëxamination.*]

A. I learned that he was about starting home to Maryland that morning, and that I had a chance to make my money, and I had him summoned before he left town.

Q. Q. 103. Then I judge that you didn't consider Kissinger good for the money, but that you would have to join Mr. Draper in order to collect anything on execution—is that the fact?

[*Objected to as leading and incompetent, and as asking the opinion of the witness upon a matter as to which his opinion is not evidence.*]

A. That is the fact.

Q. Q. 104. Had you been waiting some time to catch Mr. Draper up there at Marysville?

[*Objected to as leading and not reëxamination.*]

A. I hadn't thought of that until I saw him there; I think William Fenn first mentioned it to me.

Q. Q. 105. Do you mean that William Fenn first suggested to you that you could make the money out of Draper?

[*Objection continued.*]

A. Yes, sir.

Q. Q. 106. When you had the summons served on Mr. Draper, where was he and what was he doing?

[*Objection continued.*]

A. He and Mr. Kissinger were coming down the street from his farm leading two colts—Mr. Draper was about starting home to Maryland that morning.

Q. Q. 107. Did you understand what was to be done with the colts and why they were leading them down?

[*Same objection and as incompetent.*]

A. I learned that Mr. Kissinger had sold them to him as part pay for rent.

Q. Q. 108. What was the color of those two colts, if you remember?

[*Objections continued.*]

A. One was a black colt and the other a bay-colored colt.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 4th day of March, 1884.

FRED. M. OTT,
Examiner.

GEORGE C. STRINE.

BENJAMIN K. GOODYEAR, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

My age is forty-seven; I reside at Carlisle, Cumberland county, Pa.; I am not engaged in anything at present; I am a member of the Carlisle bar.

Q. 2. What business have you been engaged in within the last few years?

A. For the last four years I have been superintendent of the Antietam Iron Works, Washington county, Maryland; from November, 1870, till 1879 I was the under-sheriff of Cumberland county, Pa.

Q. 3. Did you know George W. Kissinger who formerly lived at Milltown or Eberly's Mills, Cumberland county, Pa.?

A. Yes, sir; I knew him; I simply knew him; I had an execution against him.

Q. 4. Did you seize any property on that execution?

A. I did.

Q. 5. What proceedings then took place?

A. He claimed the benefit of the exemption laws; I had appraisers appointed and held the appraisement on the 4th of December, 1871; the property was short of three hundred dollars; I returned the writ on the 14th of December, 1871, unsatisfied.

Q. 6. What kind of property did you levy on at that time?

A. Some store goods, household furniture, and some stock.

[*Respondents' counsel offers in evidence as exhibit "Kissinger fi. fa.," a copy from the records of the court of common pleas in and for the county of Cumberland, Pa., of an execution issued from said court on the 13th day of November, 1871, against George W. Kissinger at the suit of P. A. & S. Small, and of the return of proceedings thereon, and of the docket entries in said suit.*

The exhibit is as follows:

Among the Records and Proceedings enrolled in the Court of Common Pleas in and for the county of Cumberland, in the Commonwealth of Pennsylvania, to No. 12, January term, 1872, is contained the following:

COPY OF EXECUTION DOCKET ENTRY.

Hend. & Hays.	Alias *Fi. Fa.*				
P. A. & S. Small,	Rl. Dt.,		400	00	Dec. 14, 1871, writ returned. Levied, Dec. 1st, 1871, on a lot of cotton laps, linen, calico, pants stuff, cassimere, flannel, muslin, ticking, shoes, hats, queensware, glassware, groceries, fancy articles, scales, mirror, umbrellas, beds, bedding, kitchen furniture, pig, wagon, harness, horse, together with all the defendants' personal property. Seized and taken in execution as the property of Geo. Kissinger.
12 *vs.*	Int., 20 Sept., 1871.				
George W. Kissinger.	Att'y,		5	75	
Entered 28th Nov.,	Tr., L. L.,			50	
1871. *Fi. Fa.*, No.	Proth'y, C,		1	10	
12, Nov. T., 1871.	Sheff. F,		5	20	
Attachment, No. 55,	" on att.,	3 56			
Nov. T., 1871.	Proth'y C,	1 16			
			4	72	
	Sheff. F,		9	58	
	Proth'y C,			75	
			27	60	

The deft. having claimed the benefit of the exemption law, I had the above-levied property appraised as per schedule attached, which appraisement exhausted the defendants' property.

So answers,

B. K. GOODYEAR,
Deputy Shff.

Sheff. F, $9 58.

Exit Pluries, Fi. Fa., No. 56, January T., 1872.

In pursuance of the request of George W. Kissinger, I have summoned

John B. Drawbaugh, George B. Heck, Daniel Hart, to act as appraisers, under the act of 9th April, 1849, to appraise three hundred dollars worth of property to remain for the benefit of the said George W. Kissinger.

We, the appraisers, summoned as above mentioned, having been duly affirmed according to law, to appraise justly and fairly the property which the said George W. Kissinger elects to retain, do certify that we have appraised the same, as follows:

15 cotton laps, 50; 35 yds. linen, $1 20,	$1 70	3 brooms,	40
Linen, 80; ticking, $4 20; 8 yds. P muslin, 56,	5 56	Store-lamp,	20
25 yds. drilling, $2 80; 8½ yds. cassimere, $3 95; 6 P wadding, 18,	6 93	6 yds. mosquito bar,	60
44½ yds. P. stuff, $5; 12 yds. flannel, $1 80; 192 yds. muslin, $10 36,	17 16	Crocks, $1 50; sundries, $2,	3 50
2 skirts, 80; 16 yds. T. linen, $2 86; 15 yds. check, $1 35,	5 01	Molasses, $3; grind stone,	3 25
6 yds. cassimere, $2 70; 195 yds. P. stuff, $27 70; calico, $25,	55 40	Corn, potatoes, and cabbage,	2 20
Hdkf's, $1; muslin, $1 50; suspenders, $1 05; envelopes, 72; hones, $1,	5 27	Kitchen furniture,	10 00
Corsets, &c., $5 24; hose, $1 75; 36 pr. shoes, $52; 12 hats, $4 80; sundries, $3,	66 79	Dining-room furniture,	5 00
Spices, $1 50; sundries, $1; spices, $2,	4 50	2 beds and bedding,	15 00
Toilet, 75; rugs, 70; 5 lamps, $2,	3 45	Tubs, stands, and kettles,	5 00
Segars, 75; soda, 09; starch, $4,	4 84	Sundries,	50
Rosin, sand, crackers, beans, and soda,	1 38	Pig,	1 00
Soda ash and plane handles,	1 00	Wagon and harness,	4 00
4 globes, 56; tobacco and candy, $1,	1 56	Horse,	5 00
Sugar, $1 20; window blinds, 20,	1 60	Coal oil,	2 90
Scales, weights, and paper,	2 00	One barrel,	75
1 mirror, $1 25; 2 umbrellas, $1 50,	2 75	2 casks,	20
8 bowls, 96; 6 dishes, 72,	1 68	1 empty keg,	75
Glassware and spittoons,	4 00		$60 25
	$192 58		192 58
			$252 83

J. B. Drawbaugh,
Geo. B. Heck.
Daniel Hart.
4 Dec., 1871.

CUMBERLAND COUNTY, ss.:

The Commonwealth of Pennsylvania to the Sheriff of Cumberland County,

GREETING: You are hereby commanded (as before commanded) that of the goods and chattels, lands and tenements of George W. Kissinger, late of said county, yeoman, in your bailiwick, you [SEAL.] cause to be made and levied as well a certain debt of four hundred dollars, lawful money of the United States, which P. A. & S. Small, lately in our county court of common pleas, before our judges at Carlisle, recovered against the said Geo. W. Kissinger, as also seventeen $\frac{27}{100}$ dollars, which to the said plaintiffs in the same court were adjudged for their damages, which they sustained by occasion of the detention of that debt, whereof the said Geo. W. Kissinger is convict. And have you then that money before our judges at Carlisle, at our county court of common pleas, there to be held, the 2d Monday of January next, to render to the said plaintiffs for debt and damages aforesaid. And have you then and there this writ. Witness Hon. James H. Graham, president judge of said court at Carlisle, the 13th day of November, A. D. 1871.

J. R. IRVINE, *Dep'y Prothonotary.*

14 Dec., 1871, writ returned.

Levied Dec. 1st, 1871, on a lot of cotton laps, linen, calico, pants stuff, cassimere, flannel, muslin, ticking, shoes, hats, queensware, glassware, fancy articles, scales, mirrors, umbrellas, beds and bedding, kitchen furniture, pig, wagon, harness, horse, together with all the defendants' personal property. Seized and taken in execution as the property of Geo. W. Kissinger. The deft. having claimed the benefit of the exemption law, I had the above-levied property appraised as per schedule attached, which appraisement exhausted the defendant's property.

So answers,

B. K. GOODYEAR,
Deputy Shff.

No. 12, January term, 1872.

P. A. & S. Small,
vs. } *Alias Fi. Fa.*
George W. Kissinger.

Rl. Dt., $400 00
Int., 20 Sept., 1871.

Att'y,			5 75
Tr. L. L.,			50
Proth'y, C,			1 10
Sheff. F,			5 20
"	on att.,	$3 65	
Proth'y, C,	"	1 16	
			4 72

Sheff. F, $9 58.
Rec'd Nov. 29, 1871, at 2 o'clock and 30 min., P. M.
Hend. & Hays.

COMMONWEALTH OF PENNSYLVANIA, } ss:
County of Cumberland, }

I, James A. Sibbett, prothonotary of the court of common pleas in and for said county, do hereby certify that the foregoing is a full, true, and correct copy of the whole record of the execution proceedings therein stated, wherein P. A. & S. Small are plaintiffs, and George W. Kissinger, defendant, as the same remains of record before the said court at No. 12, of January term, A. D. 1871.

[SEAL.]

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, this 18th day of January, A. D. 1884.

JAMES A. SIBBETT,
Prothonotary.

I, Martin C. Herman, president judge of the Ninth judicial district, composed of the county of Cumberland, do certify that James A. Sibbett, by whom the annexed record, certificate, and attestation were made and given, and who, in his own proper handwriting, thereunto subscribed his name and affixed the seal of the court of common pleas of said county was at the time of so doing and now is prothonotary, in and for said county of Cumberland, in the Commonwealth of Pennsylvania, duly commissioned and qualified, to all of whose acts as such full faith and credit are and ought to be given as well in courts of judicature as elsewhere, and that the said record, certificate, and attestation are in due form of law, and made by the proper officer.

MARTIN C. HERMAN,
President Judge.

COMMONWEALTH OF PENNSYLVANIA, } ss:
County of Cumberland, }

I, James A. Sibbett, prothonotary of the court of common pleas in and for the said county, do certify that the Honorable Martin C. Herman, by whom the foregoing attestation was made, and who has thereunto subscribed his name was at the time of making thereof and still is president judge of the court of common pleas, orphans' court, and court of quarter sessions of the peace in and for said county, duly commissioned and qualified; to all whose acts as such full faith and credit are and ought to be given, as well in courts of judicature or elsewhere.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, this 18th day of January, A. D., 1884.

[SEAL.]

JAMES A. SIBBETT,
Prothonotary."

Objected to as immaterial, irrelevant, and not rebuttal.]

Q. 7. In the certified copy of the record, which I have just put in evidence, there is contained the return of John B. Drawbaugh, George B. Heck, and Daniel Hart, appraisers, under the Pennsylvania statute of April 9, 1849, to appraise three hundred dollars' worth of property, to remain for the benefit of said George W. Kissinger, as exempt from levy and execution, and from which it appears that the appraisers found property exempt to the amount of $252 83; are these the proceedings to which you referred as had under your levy?

A. Yes, sir.

Q. 8. I see that the appraisers only found $252 83 exempt, and I understand from your testimony that that included the whole of Mr. Kissinger's property so far as you could find it to levy on; am I correct?

[*Objected to as irrelevant and immaterial.*]

A. Yes, sir.

Q. 9. When did you summon the three appraisers, John B. Drawbaugh, George B. Heck, and Daniel Hart?

A. I summoned them on the day of the appraisement—the 4th of December, 1871.

Q. 10. Where did you find John B. Drawbaugh that day?

A. I found John B. Drawbaugh in the work-shop of Daniel Drawbaugh.

Q. 11. Were you ever in Daniel Drawbaugh's work-shop before or since that day?

A. I don't think I have been there since—I was there once before.

Q. 12. When you summoned John B. Drawbaugh that day, did he start right off with you to attend to the appraisement, or did you have to wait for him?

A. I had to wait for him a short time.

Q. 13. How did you occupy your time while waiting for him?

A. In talking to Mr. Daniel Drawbaugh; he was showing me his electric clock and other instruments through the shop.

Q. 14. What other instruments did he show you that day besides the electric clock?

A. He showed me his talking-machine, as he called it, and told me that it was an electric machine also; the way he got to speaking to me of it was, the surprise I expressed at seeing a clock run by electricity; he then told me of his talking machine, which he said was also done by electricity, over wires; he took me to an instrument and asked me to listen while he went to another portion of the building—I think on the floor above; I listened and heard him speak; what he said through the instrument I do not remember, neither do I remember anything about the instrument as to its appearance; I thought at the time that he was deceiving me by talking through a speaking-tube, and I paid little attention to it; my attention was called back to the matter again during

the Centennial year while in Philadelphia, by seeing some boys talking over a string telephone.

Q. 15. When he talked through the instrument and you listened at it at his shop, did you at the time hear and understand the words that he spoke, through the instrument?

[*Objected to as assuming and leading.*]

A. I did, distinctly.

Q. 16. Have you ever levied any execution of the goods and chattels of George W. Kissinger since the 4th of December, 1871?

A. No, sir; not to the best of my recollection; he moved away from there; at any rate if I did, it must have been in some other portion of the county.

[*Deposition objected to as new matter not in rebuttal, and further objected to as to alleged declarations of Daniel Drawbaugh as not evidence.*]

Cross-examination, de bene esse, by Mr. Howson:

Cross-Q. 17. You have referred to seeing an electric clock at Mr. Drawbaugh's place; did you see more than one such instrument?

A. I don't remember that I did see more than one electric clock.

Cross-Q. 18. Did you see one running?

A. I did.

Cross-Q. 19. Can you describe its appearance—its shape, size, and so forth?

A. It was a large office clock—I would suppose about three feet high—with a face about fifteen inches in diameter; it was fastened up against the gable end of the building; the face was probably eight feet from the floor; from out of the bottom of the clock two wires extended downward into a vessel containing earth and some description of plants or flowers growing in it.

Cross-Q. 20. What sort of a case had this clock; was it a wooden case and what sort of wood, if you now remember; and was it ornamented or not, as you remember?

A. It had a wooden case; I don't remember what sort of wood it was; I think it was plain.

Cross-Q. 21. You say that Mr. Drawbaugh showed you a number of other things there that day besides the clock and the talking-machine; will you tell us what other things you remember to have seen there on that occasion, besides the clock and the talking-machine?

A. He showed me the works of another clock that he was making, and explained to me that he made the wheels and works himself; he also showed me a very large horse-shoe magnet that he had made himself, and other things that I can't remember now.

Cross-Q. 22. Is it your recollection that when you went there you found him working at a clock?

A. Yes, sir; he was working at one of the larger wheels in the clock, and the peculiarity in the cogs of the wheel is what makes it so distinct in my recollection; I had never seen a wheel of that kind before.

Cross-Q. 23. Did you see any other men in the shop that day besides Daniel and J. B. Drawbaugh?

A. I recollect of none others being there.

Cross-Q. 24. Have you any recollection now of any machinery there or articles other than those which, as you have testified, Daniel Drawbaugh called your attention to—things I mean which you noticed yourself as you were going about the shop?

A. Yes, sir; I saw his tools, his lathes, some patterns hanging on the walls, wheels, and such things; also some coils of copper, brass, and other wire hanging on the wall.

Cross-Q. 25. Was Mr. J. B. Drawbaugh in the same room with Daniel Drawbaugh when you went to the shop that day; and what, if you recollect, was he doing?

A. When I first went to the shop I met Mr. J. B. Drawbaugh at the top of the steps as you go into the work-shop—there are some eight or ten steps as you go from the ground up—and I asked him to be an appraiser; he said he would, but asked for a few minutes' time, and left me and went up on to the third floor; I didn't see him again until we left the building to go over to the store.

Cross-Q. 26. At which end or side of the shop did you enter that day?

A. I think the building stands north and south; if so, I entered at the north gable end—I ain't certain about the points of the compass.

Cross-Q. 27. When last, according to your present recollection, had you occasion to visit Milltown or Eberly's Mills?

A. In 1879, some time in April, was the last time.

Cross-Q. 28. In connection with your business as sheriff, or on some other business?

A. I was there on an electioneering tour for the office of sheriff.

Cross-Q. 29. When last before that did you visit the village of Eberly's Mills?

A. I have no recollection; I may have been there dozens of times since the holding of that appraisement, but when, I can't say.

Cross-Q. 30. This electioneering visit which you say occurred sometime in April, 1879, were you personally a candidate for the office of sheriff of Cumberland county at that time, or were you electioneering in the interest of somebody else?

[*Objected to as immaterial and irrelevant, and not proper cross-examination.*]

A. I was a candidate for the nomination myself.

Cross-Q. 31. Can you give us from memory any idea of the number of times after 1871 that you had occasion to visit the village of Milltown, or Eberly's Mills, in your capacity of under-sheriff; and give us as nearly as you can the times of such visits?

[*Same objection.*]

A. I would be safe in saying a half dozen of times; I can give no dates as to years or months.

Cross-Q. 32. I judge from your testimony that you held the deputy-sheriffalty for three terms; is that right?

A. I was the regular and only deputy of James K. Foreman, who was sheriff from 1870 to 1873; and I was the special deputy of Joseph Totten, from 1873 to 1876; also special deputy to David H. Gill, from 1876 to 1879.

Cross-Q. 33. Had you occasion to visit Eberly's Mills, as well as other places in the county, on matters political in connection with the election of 1873 and 1876?

[*Same objections.*]

A. I never traveled the county in the interests of any candidate but myself.

Cross-Q. 34. Then the only political visit you ever paid to Milltown was that in 1879; is that it?

[*Same objections.*]

A. Yes, sir.

Cross-Q. 35. During the time you were connected with the sheriff's office was your residence continually at Carlisle?

A. No, sir; from April 1, 1871, to April 1, 1874, I resided in Carlisle; from April 1, 1874, until November, 1874, I resided at Pine Grove furnace; from that time until April 1, 1880, I resided in Shippensburg.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 4th day of March, 1884.

FRED. M. OTT,
Examiner.

B. K. GOODYEAR.

DAVID H. SHEIBLEY, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

My age is forty-eight; I reside in Perry county, Spring township; I am a farmer.

Q. 1. Are you acquainted with Daniel Drawbaugh, of Eberly's Mills, Cumberland county, Pa.?

A. I am.

Q. 2. When and how did you first make his acquaintance?

A. I made his acquaintance through his brother Harry, who was in our neighborhood distilling; he said that his brother Daniel was the inventor of a force-pump; he told my father about it and he had one put in; Harry got it for him and it didn't work, and then Daniel came and re-set it; I think I met him once before that at Eberly's Mills; I was introduced to him at a flitting that I hauled.

Q. 3. At what time was it that Daniel Drawbaugh came and re-set the force-pump?

A. It was either in 1873 or 1874; it couldn't have been before 1873 nor later than 1874; I think it was in the fore part of the summer.

Q. 4. Has he ever been up to your place since that, so far as you know?

A. He was through there last summer some time; that is the only time that I know of.

Q. 5. When he was up at your place re-setting the force-pump in 1873 or 1874, did you have any conversation with him about any other inventions of his; and if so, what inventions, and what did he say about them at that time?

[*Objected to a new matter, not rebuttal, also as incompetent because calling for declarations or conversations not evidence.*]

A. He told me that he had a machine—I think he called it a talking-machine, but wouldn't be positive about the name—that would surpass, or did surpass the telegraph; that it would talk to a distance.

Q. 6. Did you ever mention that subject to anyone here in Harrisburg; if so, when and under what circumstances?

[*Objected to as incompetent.*]

A. I was in Harrisburg here in the winter of 1876–7, and also of 1877–8, about the time the telephone was introduced here; I had a brother-in-law in the Western Union office, and he begged me to go along in to see the telephone; I think it was then connected with the asylum; when he had got done showing it to me, I asked him if that was Drawbaugh's invention; he said no, it was Bell's.

[*Objected to as not evidence.*]

Q. 7. On what business were you here in Harrisburg during the winters of 1876–7 and 1877–8?

A. I was a member of the Legislature.

Q. 8. Are there any circumstances within your recollection that enable you to be certain that the conversation which you had with Mr. Drawbaugh was not as late as 1875?

[*Objected to as leading and incompetent.*]

A. There is; I had a man hired that came to me in the spring of 1875, and we had taken up the trough that the water ran through, that spring; the conversation I had with Drawbaugh was before that, and couldn't have been later than 1874.

[*Deposition objected to as new matter, not rebuttal, and cross-examination, de bene esse, by Mr. Howson.*]

Cross-Q. 9. Who put the force pump in when it was first put in?

A. Harry Drawbaugh.

Cross-Q. 10. What time of year was it when it was first put in?

A. It was in the fall of 1872.

Cross-Q. 11. Were you then living where you are now living?

A. Yes, sir.

Cross-Q. 12. Is that pump still in use?

A. No, sir.

Cross-Q. 13. Is it still on the place, or was it sold or broken up, or what became of it?

A. The pipe and the pump are still on the place.

Cross-Q. 14. How long has that pump been out of service?

A. The pump has been out of service since two or three days after Daniel Drawbaugh was there.

Cross-Q. 15. At whose request did you come here to give your testimony, and when was that request made?

A. I was subpœnaed by Harry Drawbaugh on last Thursday.

Cross-Q. 16. You say Mr. Daniel Drawbaugh was at your place last summer; what was he doing there then?

A. Mr. Drawbaugh was there to see me relative to this telephone; he said he remembered telling me about it, but he didn't know whether I remembered anything about it.

Re-direct by Mr. Hill:

Q. Q. 17. Why did the pump go out of operation so soon?

A. It was claimed that we couldn't get head enough of water.

Q. Q. 18. After the trough was taken up in the spring of 1875, was it ever put down again?

A. No, sir; not to use with that instrument; I had the trough put down about a year ago.

Re-cross by Mr. Howson:

Re-cross-Q. 19. When last, before to-day, had you occasion to visit Harrisburg?

[*Objected to as not re-cross-examination.*]

A. I haven't been in Harrisburg since the inauguration of Governor Pattison in January, 1883—I may have been here since, I am not positive.

Re-cross-Q. 20. Weren't you down a number of times between the winter of 1878–9 and the inauguration of Governor Pattison?

[*Same objection.*]

A. I was; yes, sir.

Re-cross-Q. 21. You have referred to a brother-in-law who was an employé of the Western Union Telegraph Company; what is that brother-in-law's name, and where is he now?

[*Same objection.*]

A. His name is Joseph West; he is living at Carlisle now; he is tending bar for Jacob Thudium, at Carlisle.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 4th day of March, 1884.

FRED. M. OTT,
Examiner.

D. H. SHEIBLEY.

Adjourned until March 5, 1884, at 10, A. M.

MARCH 5, 1884, 10.30, A. M.

Examination resumed; present, same counsel.

ARON M. EGOLF, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

My age is seventy; I reside in Tyrone township, Perry county, Pa.; my occupation is, I may say, farming, I am a retired farmer; I have lived in Tyrone township for twenty-two years till the 1st of April next.

Q. 1. Were you ever engaged in the distilling business in co-partnership with Henry F. Drawbaugh, of Newville, Cumberland county; if so, when did you and he first commence to be connected together in that business, and when did your connection together in that business cease?

A. I was. We entered it in 1869; we ceased in 1872—in the latter part of the year—in December, along there.

Q. 2. Have you ever been connected with him in business since?

A. Never since, no.

Q. 3. Before you and Henry F. Drawbaugh became connected together in the distilling business, he, (Mr. Henry F. Drawbaugh,) was an officer of the United States Internal Revenue Service, I believe, was he not?

[*Objected to as not seeking the best evidence.*]

A. He was to my knowledge.

Q. 4. Do you remember anything about Mr. Henry F. Drawbaugh having an apple-grinding cylinder made at his brother Daniel's shop while he was connected with you in business?

[*Objected to as leading.*]

A. Yes, sir; I do.

Q. 5. Do you know when that was?

A. About the beginning of August, 1872, when we entered into manufacturing apple whisky.

Q. 6. Were you ever at Eberly's Mills, Cumberland county?

A. No, sir; I never was; I have passed through; I know where it is.

Q. 7. About how far is it from Eberly's Mills to your home in Perry county?

A. About twenty-eight miles.

Q. 8. Did you ever hear of Daniel Drawbaugh's invention of a talking-machine; if so, when did you first hear of it, and who told you of it?

[*Objected to as leading and as new matter, not rebuttal.*]

A. I did, in quite the latter part of 1872; Harry Drawbaugh came to my house and told me of it.

Q. 9. What did Harry Drawbaugh tell you about it at that time?

[*Objected to as asking for hearsay.*]

A. In conversation it came around that telegraphing was nothing, now no more; that his brother had invented a talking-machine by which persons in different places could talk personally with one another.

Q. 10. Did he tell you whether or not the machine had actually been made and talked through?

[*Same objections, and as outrageously leading.*]

A. Yes, sir, he did; he said it had already.

Q. 11. When you heard of the Bell telephone what did you think of it?

[*Objected to as incompetent—not inquiring for any fact.*]

A. I knowed no better at that time than that this was decidedly the very thing that Drawbaugh had invented, and that it was now handed into Bell's hands.

Q. 12. Are you personally acquainted with David H. Sheibley and William W. Snyder, of Perry county, who have, within a day or two, been under examination as witnesses in this case?

A. I am particularly—close neighbors—within sight.

Q. 13. As those gentlemen live in a part of the country which is re-

mote from here and from the court where this case will be tried, I would like to have you state what their standing is and their reputation in the community where they live, if you know.

A. Very good; they are considered very fine, good men in our neighborhood there; in fact, among the best.

Q. 14. The person whom you call Harry Drawbaugh is Henry F. Drawbaugh, I suppose?

A. Yes, sir.

Q. 15. At the time when Harry Drawbaugh told you about his brother's talking-machine, was he (Harry) still in copartnership with you?

[*Objected to as leading.*]

A. In a manner he was; we had nothing to do, but we had a little whisky between us yet that belonged to the firm.

[*Deposition objected to as not rebuttal, and cross-examination, de bene esse, by Mr. Howson:*]

Cross-Q. 16. When was Harry Drawbaugh last at your house?

A. That would have been last week.

Cross-Q. 17. What day last week, and how long was he there?

A. He was there on last Wednesday; he might have been there altogether two hours.

Cross-Q. 18. Was anybody with him?

A. No, sir.

Cross-Q. 19. What was he doing during the two hours that he was at your place last week?

A. He eat his dinner and had his horse fed.

Cross-Q. 20. You and he, I suppose, had quite a little talk together during the two hours that he was there?

A. We had; at the same time he subpœnaed me as a witness to be here on last Monday.

Cross-Q. 21. Was the serving the subpœna on you the only business he had with you on his visit to you last week?

A. That was the only business.

Cross-Q. 22. Did he tell you that he had subpœnaed, or was going to subpœna, Mr. David Sheibley and Mr. W. W. Snyder?

[*Objected to as immaterial and calling for hearsay.*]

A. Yes, sir; he was going from my place to subpœna them.

Cross-Q. 23. I understand from your testimony that you have been in Harrisburg since Monday for the purpose of testifying; is that so?

[*Objected to as immaterial.*]

A. I didn't say so; I left home on Monday, but I came to Harrisburg on Tuesday morning early.

Cross-Q. 24. Did you and Mr. Snyder and Mr. Sheibley travel down here from your homes together?

[*Same objection.*]

A. No, sir.

Cross-Q. 25. Who, if any one, traveled with you from Perry county to Harrisburg?

[*Objected to as immaterial, trivial, and wasting time.*]

A. I came to Carlisle in my own conveyance and took the cars from there to Harrisburg, and so did Mr. Sheibley and Mr. Snyder; each came in his own conveyance to Carlisle.

Cross-Q. 26. When last before last week, and where, did you meet Mr. Henry F. Drawbaugh?

[*Same objection.*]

A. That is hard for me to state; it might have been several months before that that I had seen him last; I saw him at my house.

Cross-Q. 27. What was he doing at your house on that occasion?

[*Same objection.*]

A. He merely traveled past that day going to Dave Sheibley's.

Cross-Q. 28. But he stopped in to see you, did he?

[*Same objection.*]

A. Yes, sir; he called outside of the house to see me; he wasn't in the house.

Cross-Q. 29. You say he was on his way to Sheibley's; he told you that, did he?

[*Same objection.*]

A. Yes, sir.

Cross-Q. 30. And what did he say he was going to Sheibley's for?

[*Same objection.*]

A. I can't say that he said anything at all what he was going to go to Sheibley's for; he appeared to be in a hurry, you know.

Cross-Q. 31. Did he tell you that he had been or was going to see anybody else than Sheibley that day?

[*Same objection.*]

A. No, sir.

Cross-Q. 32. Is it your recollection, then, when Mr. Harry Drawbaugh spoke to you, as you have testified, of his brother's talking-machine, he spoke of it as a working machine which talked successfully to a distance, and would do away with the telegraph?

A. There was nothing said about doing away with the telegraph; this was said: that the telegraph was nothing now no more; that his brother now had made a talking-machine that they already had completed to talk from house to house with each other, and by having a wire further they could talk to any distance.

Cross-Q. 33. And Mr. Harry Drawbaugh gave you to understand, did he, that he thought this talking-machine of his brother's was something more wonderful and handier than the telegraph?

[*Objected to as incompetent; the statement of Harry being itself given, the witness's understanding or opinion of what Harry thought of the machine is clearly not evidence.*]

A. That was the calculation, yes; he expressed himself in that way.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 5th day of March, 1884.

FRED. M. OTT,
Examiner.

ARON M. EGOLF.

Adjourned until March 6, 1884, at 10, A. M.

[*The deposition of W. W. Snyder was also commenced on March 5, 1884, previous to that of Mr. Egolf, but was suspended, and will be printed further on.*]

March 6, 1884, 11, A. M.

Examination resumed.

Present, same counsel.

ABRAHAM MAY, *being produced, affirmed, and examined saith:*

Examined by Mr. Hill:

My age is 47; I reside in Center township, Perry county, Penna. I am a farmer now; I have been a carpenter and builder.

Q. 1. How far do you live from Eberly's Mills, Cumberland county, Penna.?

A. It would be about thirty miles.

Q. 2. When did you move to Center township, Perry county?

A. I moved into Center township two years ago; that would be 1882.

Q. 3. How long have you lived in Perry county?

A. I have lived there six years the 26th of this month; I went there March 26, 1878.

Q. 4. Where did you live last before that, and how long?

A. I lived in Camp Hill, Cumberland county, 1875, 1876, and 1877—commencing in the latter part of March, 1875, and continuing until I moved to Perry county.

Q. 5. And where did you live before you moved to Camp Hill in the latter part of March, 1875?

A. I lived in Harrisburg from the spring of 1873 to the spring of 1875, towards the latter part of March.

Q. 6. Where did you live last before you lived at Harrisburg, and how long?

A. I lived at Camp Hill—I moved there in 1865, right after the war, and lived there eight years.

Q. 7. What business were you engaged in during the years 1869, 1870, and 1871?

A. I followed carpentering and contracted for building.

Q. 8. Mr. William H. Martin, a witness examined on behalf of defendants in this suit—(see defendants' printed sur-rebutting record, pp. 827 to 836 inclusive)—testified, among other things, that he is a carpenter; that he moved to Cumberland county at a time which he thinks was in 1870, and that the first work he did after he moved to Cumberland county was upon the barn building upon George Oyster's farm, on an estate which George Oyster was settling up, and which farm Mr. Wil-

son Walters was then farming that he did that work on Mr. Oyster's barn for Mr. Abraham May, who was a carpenter, and put up the barn; that he worked with Mr. May in building an addition to Mr. Daniel Hart's house at Milltown, which he thinks was in the fall of 1870, and that he worked in all for Mr. May about two years; do you know that Mr. Martin, and have you any recollection of the facts to which he refers?

[*Objected to as a leading and improper mode of examination by reciting to this witness allegations made by another witness produced for respondents.*]

A. Yes, sir; I remember Mr. Martin, and I recollect the facts to which he refers.

Q. 9. Who took from Mr. Daniel Hart the job of putting up that addition to his house that Mr. Martin mentions?

A. I took the contract.

Q. 10. Have you any book account relating to that job?

A. Yes, sir.

Q. 11. Have you the book here; and if so, will you produce it and allow the examiner to copy upon the record any entries which he may be directed to copy from it?

A. Yes, sir; here it is.

[*Witness produces account-book.*]

Q. 12. Will you point out in your account-book the entries relating to the job on that addition to Mr. Hart's house?

A. I will; here it is.

[*Witness points out entry on page* 20 *of said book.*]

Q. 13. In whose handwriting are these entries and when were they made?

A. They are in my own handwriting; they were made in 1870, at the time the work was done.

[*Respondents' counsel requests the examiner to copy upon the record at this point the entries referred to by the witness; the entries are as follows:*

"Daniel Hart 20

Detor 1870	$ cts.	Credit	$ cts.
August 22–16 1–2 day	75		
22 to 5 hands 1 day	8 00	Received cash	27 80
23 to 4 hands 1 day	6 40		
24 to 3 hands 1 day	4 80		
24 to one hand 1–2 day	80		

25 to 2 hands 1–2 day	1 60
Sep 9 to 2 hands 1–2 day	1 65
10 to 2 hands 1 day	3 30
18 to 1 hand 1 day	1 60
	$27 80"]

Q. 14. Did you ever do any work for Daniel Hart after that?

A. No, sir; I never did anything for him after that.

Q. 15. At the time that you were doing that work for Mr. Hart, did you have any other jobs under way at the same time?

A. Yes, sir; I had contracted with Mr. George Oyster, who was guardian for Simon Oyster, to put a barn up for him on the farm that was then occupied by Mr. Wilson Walters; I had one for David Oyster at the same time to put up a barn for him, too, and one to put up a barn for Dr. J. D. Bowman the same season.

Q. 16. How long did you continue in the carpentering and building business on your own account as master builder?

A. I think up to 1872; that is, I didn't carry on for myself in 1872; I was foreman for Samuel Myers; in the spring of 1873 I moved to Harrisburg; I was then employed by the Pennsylvania Railroad Company; I lived in Harrisburg until the spring of 1875; after I moved back to Camp Hill I continued to carry on business as a carpenter and master builder until I moved to Perry county; I have worked at my trade a little since I moved to Perry county, but not as a master builder.

Q. 17. When you were putting the addition to Mr. Daniel Hart's house, at Milltown, where did the hands who were employed on Mr. Hart's house get their meals?

A. At Mr. Hart's.

Q. 18. Did you get your meals at Mr. Hart's also?

A. When I was there I did; yes, sir.

Q. 19. How much were you there while the work was going on?

A. I think I only worked there until the building was raised.

Q. 20. And left your hands to finish it?

A. Yes, sir.

Q. 21. Mr. Martin, in his deposition, gave the names of John Gilmore, Jacob Gilmore, Lewis Frysinger, Henry Shoop, and Eli Stair as among the men who worked with him on the barn on the place where Mr. Walters lived; how long were John Gilmore and Jacob Gilmore in your employ, and in what years?

[*Objected to as leading.*]

A. Jacob Gilmore went to work for me in 1869 after harvest—that is, about the first of August; he worked for me in 1870 also, to the latter part of November or December; I hardly know when he quit. John Gilmore commenced in the same year, 1869, sometime after Jacob commenced; John worked until November or December, 1870; I think their name was Kilmore.

Q. 22. If you have any paper here in your possession which was made during the time that either of the Gilmores, or Kilmores, was working for you, will you please produce it in order that the examiner may copy it upon the record to show the date?

A. Yes, sir; here is an order I gave Jacob Kilmore upon John Eshleman for twenty-five dollars on account of his work for me.

[*Witness produces the order which is copied by the examiner as follows:*

"Camp Hill, Jan 15, 70
Mr. Jno. Eisheman, please let the barer
Jacob Kilmore have twenty five dollars,
on my account and oblige your friend
Abraham May"]

Q. 23. Do you know Daniel Drawbaugh of Eberly's Mills, Cumberland county, Pa?

A. Yes, sir; I do.

Q. 24. Did you ever see any of his talking-machines; if so, when did you first see any of them, so far as you remember, and how happened you to see them?

[*Objected to as leading.*]

A. The time I put up Mr. Hart's house, we broke the set screw in our boring-machine, and I took it down to Mr. Drawbaugh to get him to drill the old screw out and put a new one in, and that is the first time I saw Mr. Drawbaugh's talking-machine.

Q. 25. Where was Mr. Drawbaugh's talking-machine when you saw it at that time?

A. It was in the basement or lower story—I call it a basement—and was taken up to the other story—that is, the wires ran up along a window to another story.

Q. 26. By the basement do you mean the lowest part of the shop—where the water-wheel is?

[*Objected to as leading, and improper mode of inquiry.*]

A. Yes, sir.

Q. 27. Who showed you the talking-machine at that time?

A. Mr. Drawbaugh was there.

Q. 28. Did you talk through the machine, or listen to hear anybody else talk through it at that time or not?

[*Objected to as leading.*]

A. I listened to him talking through it, but I don't know as I talked through it.

Q. 29. In what part of the shop were you when you listened?

A. I was in the basement part.

Q. 30. And where was he, if you know?

A. I don't know; he was upstairs on the next floor.

Q. 31. When you listened at the machine in the basement and he talked into it upstairs, did you or did you not hear and understand through the machine what he was saying?

[*Objected to as assuming and leading.*]

A. I did hear it; yes, sir.

Q. 32. Did you understand through the machine the words that he spoke, or not?

[*Same objection.*]

A. I did; yes, sir.

Q. 33. Have you now any recollection of what those words were?

A. No, sir; I have not.

Recess until 2, P. M.

Q. 34. Along about the year 1870, and from that on down so long as you lived at Camp Hill and in that neighborhood, was Drawbaugh's talking-machine a matter that was known and talked of in the community around there or not?

[*Objected to as leading.*]

A. It was; yes, sir.

Q. 35. To what extent was it talked about away back, say from 1870 to 1873, when you moved away to Harrisburg?

[*Objected to as assuming.*]

A. Oh, well; I often heard it spoken of there.

Q. 36. Did you ever hear it spoken of before you saw it and heard it spoken through at the time when you had the boring-machine repaired?

[*Objected to as leading and calling for guess-work.*]

A. I can't say as I did.

Q. 37. When you lived at Camp Hill, did you know a man named John A. Smith, a butcher?

A. Yes, sir; I did.

Q. 38. Do you recollect ever being with him at Eberly's Mills, and being down to Daniel Drawbaugh's shop on the same day while Smith was at the village?

[*Objected to as leading, and as new matter.*]

A. Yes, sir; I remember of us being there.

Q. 39. As near as you can recollect, state when that was when you and he were there and you went down to Drawbaugh's shop, leaving him at the village.

[*Objected to as assuming what has not been testified to.*]

A. It was in the latter part of 1872, or the beginning of 1873; before I moved to Harrisburg awhile.

Q. 40. Do you recollect saying anything to him that day about Drawbaugh's talking-machine?

[*Objected to as incompetent.*]

A. I do not.

[*Deposition objected to as new matter, not rebuttal, and cross-examination, de bene esse, by Mr. Howson:*]

Cross-Q. 41. I understand you to testify that you were living at Camp Hill, and carrying on business there as a carpenter and builder, from March or April, 1875, until about the same time in 1878; is that correct?

A. Yes, sir; about that.

Cross-Q. 42. For what persons living in the country in the neighborhood of Camp Hill and Eberly's Mills do you remember doing work in that period of time?

A. I believe the first job was that I put a house up for John Free in the spring of 1875; I can't answer you as to all the persons I worked for in that time, but I will do the best I can. I worked for John Free, Frederick Sheely, William Shettel, George Oyster, Mrs. Heck, Jacob Sadler, George Free; of course there were others, but I don't remember them.

Cross-Q. 43. You have stated that you had several building jobs on hand about the time you took the job of building the addition to Daniel

Hart's house; of these several jobs which, if any of them, were you engaged upon during the time, or any part of the time, that you were engaged on Mr. Hart's house?

A. I can't tell you exactly which of them; I put up a barn the same fall for Dr. J. D. Bowman and one for David Oyster.

Cross-Q. 44. It would seem from the book which you have produced that you were at work for Mr. John D. Bowman during most, if not all, of the time that you were at work for Mr. Hart; do you remember which of your hands you had at work on the job for Mr. Bowman?

A. No, sir; I can't tell you which of them I had at work there.

Cross-Q. 45. You can't tell whether Mr. Martin helped you on that job or not?

A. He helped at the barn some time, but whether it was at the time we worked at Hart's house or not, I don't know.

Cross-Q. 46. You say you put up a barn for David Oyster that fall; does the time when that work was done appear on your books, and if yes, will you please point it out?

A. [Witness refers to book.] I bailed a certain man whom Mr. Oyster loaned six hundred dollars; I put up the barn by contract for $400, and when I settled the price of the barn was taken off of what I paid him; I noticed that it is marked in the book 1871, four hundred dollars; the actual time that the barn was built does not appear on the book.

Cross-Q. 47. When and where did you become acquainted with Mr. Daniel Drawbaugh?

A. In Cumberland county, fully twenty-five years ago.

Cross-Q. 48. You and he were acquaintances and neighbors, then, down to the time you moved to Perry county, with the exception of the two years or so that you lived in Harrisburg?

A. Yes, sir; excepting that in 1875 when I moved back he moved to Mechanicsburg away from Milltown.

Cross-Q. 49. While he was living at Mechanicsburg he was carrying on work at his shop at Eberly's Mills, wasn't he?

A. Yes, sir; he was.

Cross-Q. 50. Had you ever been at his shop to get any work done before the occasion you have mentioned in your examination-in-chief?

A. No, sir; not that I know of.

Cross-Q. 51. You have mentioned the time when Mr. Drawbaugh

moved to Mechanicsburg; do you recollect the time when he came back to Eberly's Mills to live?

A. He moved back in the spring of 1876, if I am not mistaken.

Cross-Q. 52. When were you last at Eberly's Mills?

A. I was at Eberly's Mills in the winter of 1877–8—not since; that was before I moved to Perry county.

Cross-Q. 53. Were you there once only or several times that winter?

A. I put up an ice-house for H. W. Lewis, in Milltown, that winter.

Cross-Q. 54. How long were you at Milltown on that job that winter?

A. It might have taken us three or four days, not more than that.

Cross-Q. 55. Was that the only time you were at Milltown that winter?

[*This line of cross-examination objected to as new matter not referred to in the examination-in-chief.*]

A. No, sir; it was not.

Cross-Q. 56. How many other times were you at Eberly's Mills that winter, to the best of your recollection, and on what errands?

[*Same objection.*]

A. I couldn't answer that, I was there on any errand; I don't know how often I was there; I might have been there a half a dozen of times.

Cross-Q. 57. You were frequently there, were you not, between the spring of 1875 and the spring of 1878?

[*Same objection.*]

A. I was there—yes—I drove through the town pretty often, and went through the town.

Cross-Q. 58. The day you say you were at Mr. Drawbaugh's shop and saw a talking-machine, were you in any other part of the shop than the basement?

A. Yes, sir; I was in where he had his turning lathes, on the second floor—the next floor above the basement.

Cross-Q. 59. When were you next in that shop?

A. I was in the shop frequently afterwards; I can't give you no dates for the next time.

Cross-Q. 60. You used to pay little friendly visits to Mr. Drawbaugh at his shop when you happened to be at Eberly's Mills?

A. Yes, sir.

Cross-Q. 61. Who first saw you about giving testimony in this case, Mr. May, and when?

[*Objected to as immaterial.*]

A. John Drawbaugh came to my residence one day over a year ago, I believe; and Mr. Clendennin, I think, was with him.

Cross-Q. 62. Since that time has any one else visited you at your home upon the subject; and if so, who and when?

[*Same objection.*]

A. Daniel Drawbaugh and Mr. Jacobs were at my place either in the latter part of June or beginning of July last; I don't know which.

Cross-Q. 63. Who last saw you at your home on the subject and notified you to come here and testify?

[*Same objection.*]

A. J. W. Beers, the sheriff of Perry county, was to see me some time in the winter; I don't know what time it was.

Cross-Q. 64. Who notified you to attend here to-day?

[*Same objection.*]

A. Mr. Miller summoned me to be here.

Cross-Q. 65. How was the talking-machine, which you say you saw in the basement of Daniel Drawbaugh's shop, fixed—to what, if anything, was it fastened?

A. I think it was fastened on a board.

Cross-Q. 66. What was the board on, if you recollect?

A. If I recollect right it was on the window—on the sill of the window—I think there is where it was placed.

Cross-Q. 67. How long were you in the shop that day, and who, if any one, besides Mr. Daniel Drawbaugh did you see there?

A. I may have been an hour there, and Hiram Drawbaugh or else George Drawbaugh was in the shop at the time.

Cross-Q. 68. Can you say which of the two it was?

A. Not positively, but I most think it was George.

Cross-Q. 69. He was the only party of your acquaintance whom you recollect seeing there at the time except Daniel; is that so?

A. Yes, sir; that is all that was there that I remember of.

Cross-Q. 70. Was the visit of Mr. John Drawbaugh to your place—over a year ago, as you believe—the first time you had been seen by anybody about giving testimony in this case?

[*Objected to as immaterial.*]

A. Yes, sir; I believe that is the first.

Re-direct by Mr. Hill:

Q. Q. 71. You have spoken in cross-examination of Mr. Daniel Drawbaugh's having removed to Mechanicsburg in 1875; please reflect a little and tell us whether you are certain about that being the year that he moved there.

A. I am not positive, but it is my impression that it was in 1875; I may be wrong in the year.

Q. Q. 72. Where were you using the boring-machine when you broke the screw and had to take it down to Daniel Drawbaugh's shop to have it mended?

[*Objected to as not reëxamination.*]

A. At Mr. Hart's.

Examination taken, reduced to writing, and by the witness affirmed and subscribed to before me this 6th day of March, 1884.

FRED. M. OTT,
Examiner.

ABRAHAM MAY.

JACOB H. KILMORE, *being produced, affirmed, and examined, saith:*

Examined by Mr. Hall:

My age is thirty-eight; residence, Lisburn, Cumberland county, Pa.; I am a carpenter by trade.

Q. 1. Do you know Abraham May, who used to reside at Camp Hill, Cumberland county, Pa., and carried on the carpentering and building business?

A. Yes, sir.

Q. 2. Did you ever work for him?

A. Yes, sir.

Q. 3. When?

A. I went there Monday, August 2, 1869; I worked for him that year till about the 20th of December, and then stopped off work for that year; I went back again the 11th day of April, 1870, and worked for him till the end of that year; I have never worked for him since.

Q. 4. Mr. May has testified that in August and September, 1870, he did some work on Mr. Daniel Hart's house at Milltown; do you remember his doing that work?

A. Yes, sir; I do.

Q. 5. Were you one of the workmen who worked on Mr. Hart's house?

A. No, sir; I didn't do any work on that job.

Q. 6. Do you remember what men were employed by Mr. May at about the time that he had that job on Mr. Hart's house?

A. Myself, my brother John Kilmore, Eli Stair, William H. Martin, Harry Shoop, and Louis Frysinger.

Q. 7. Were you ever in Daniel Drawbaugh's shop at Milltown?

A. No, sir.

Q. 8. Did you ever hear of Daniel Drawbaugh's talking-machine?

[*Objected to as leading.*]

A. Yes, sir.

Q. 9. When did you first hear of it?

A. In the fall of 1869.

Q. 10. Whom did you hear speak of it at that time?

A. Harry Shoop.

Q. 11. Did you hear anybody else speak of it while you were working for Mr. Abraham May?

[*Objected to as leading.*]

A. Yes, sir.

Q. 12. If you remember the names of any other persons whom you heard speaking of it while you were working for Mr. May, will you please give them?

A. Mr. W. H. Martin, John A. Smith; those are all that I can remember, positively, at that place.

Q. 13. Did you ever hear Mr. May himself say anything about it?

[*Objected to as leading and particularly improper in view of the fact that the witness has already testified that the parties already mentioned are all that he remembers to have heard speak of it during the period or at the place referred to.*

Respondents' counsel objects that the objection mis-states the witness' testimony. In reply to which complainants' counsel calls attention to the fact that both interrogatories 11 *and* 12 *ask for parties whom the witness heard speaking of it while he was working for Mr. May, and that in response to those questions the witness has named three parties, and says that those are all that he positively remembers.*

In reply to which statement respondents' counsel simply begs leave to call the attention of the court to the last clause of witness' last answer.]

A. I think that question was asked once before; my answer was, yes, sir.

Q. 14. When you answered question 12, naming Mr. Martin and Mr. Smith as parties whom you could positively remember at that place, do you mean that you were under the impression that you had already named Mr. May?

[*Objected to as leading and incompetent.*]

A. Yes, sir; that was my impression.

Q. 15. In what year did you first hear Mr. Abraham May speak of Mr. Daniel Drawbaugh's talking-machine?

A. In 1870.

Q. 16. You have named several persons whom you heard speak of Daniel Drawbaugh's talking-machine while you worked for Mr. Abraham May and "at that place;" what place did you have reference to?

A. Camp Hill.

Q. 17. While you worked for Mr. May, did you hear anybody speak of Daniel Drawbaugh's talking-machine at any other place than Camp Hill; if so, where and who were the persons, if you remember the names of any?

[*Objected to as leading.*]

A. Yes, sir; at Nauvoo, York county, Pa., I heard my father, John Kilmore, Michael S. Drorbough, Henry S. Drorbough, and Henry Kilmore speak of it.

Q. 18. How far is Nauvoo from Eberly's Mills?

A. I should say about seven miles.

Q. 19. Are those persons whom you have named as having mentioned Mr. Drawbaugh's talking-machine at Nauvoo while you worked for Mr. May all living?

A. No, sir; all dead but Henry Kilmore.

Q. 20. Where does Henry Kilmore live now, and what relation, if any, is he to you?

A. He lives near the Nauvoo school-house in York county, Pa.; he is my first cousin.

Q. 21. When did Henry S. Drorbough die, if you know?

A. In July or August, 1881.

Q. 22. When did your father, Mr. John Kilmore die?

A. The 15th of November, 1876.

Q. 23. When did Michael S. Drorbough die, if you know?

A. In March, 1871.

Q. 24. When you were working for Mr. Abraham May in 1869 and 1870, was the matter of Mr. Daniel Drawbaugh's talking-machine a matter of general knowledge and common conversation around in the community where you worked, or not?

[*Objected to as leading and highly improper.*]

A. Yes, sir; it was.

[*Deposition objected to as new matter not rebuttal, also as hearsay.*

In reply to the above objection, respondents' counsel calls attention to the fact that the objection as to hearsay is not well taken, for the reason that the witness has not been asked to testify, and has not testified, to what people said about Mr. Drawbaugh's talking-machine, but only to the fact that as early as 1870 *Drawbaugh's talking-machine was a thing known and talked about.*]

Cross-examined, de bene esse, by Mr. Howson:

Cross-Q. 25. How long have you been living at Lisburn?

A. Since the 6th of April, 1880.

Cross-Q. 26. Lisburn is how far from Eberly's Mills?

A. Six miles—it is called six miles—that is by the road we travel.

Cross-Q. 27. Where were you living before you moved to Lisburn and how long?

A. I lived with my father until he died, and then with my mother; my home was up there.

Cross-Q. 28. And I understand that you were living at Nauvoo, York county, down to 1880; is that it?

A. A part of the time; I claimed that as my regular home.

Cross-Q. 29. At what other places did you live between times?

A. It is pretty hard to tell; I was around a great deal; part of 1875 and 1876 I was working for a telegraph company, and we made our home at most any place we came too—we stopped for a few weeks at a place; in the fore part of 1875 I was working for John Atticks, at Dillsburg, York county, Pa.; from the 13th of March, 1872, to the end of the year 1873 I worked for the Western Union Telegraph Company again; from the 1st of January, 1874, to the 1st of April, I lived with my sister at Wormleysburg, Cumberland county; then I went to Oyster's Point and worked on a barn for George Oyster on the road leading from Oyster's

Point to Oyster mill, on a farm farmed by Abe Oyster—I worked around there at my trade until the last week in September, when I went to clerking in a grocery store kept by John Bixler, at Wormleysburg, Cumberland county, Pa. I was there till February 15, 1875; in 1871 I was in Indiana; I left here on the 5th of March, 1871, and returned the 13th day of January, 1872, and remained with my father until the 13th of March of the same year.

Cross-Q. 30. While you were working for the Western Union Telegraph Company, in what section was your work done?

[*Objected to as immaterial and irrelevant, and as new matter not referred to in the examination-in-chief.*]

A. In the Sixth Telegraphic District.

Cross-Q. 31. Were you working at telegraphing, or at some other trade, in 1877 and 1878?

[*Same objection.*]

A. I was farming in 1877 and 1878 and part of 1879.

Cross-Q. 32. Where were you farming at that time?

A. At my father's place, near Nauvoo; I was farming for my mother; I settled up the estate also; I was a single man at the time.

Cross-Q. 33. What was your work while you were working for the telegraph company?

[*Same objection.*]

A. I was working as a lineman, at general repairing and building.

Cross-Q. 34. While you were working at your trade as a carpenter in 1874, at and around Oyster's Point, whom, if anybody, were you working with?

[*Same objection.*]

A. Working with W. H. Martin, John H. Kilmore, Samuel Brenner, John Mohler, William Mohler, and John Arbegast. The first two did not work with the rest; I worked with the first two after harvest.

Cross-Q. 35. Is the W. H. Martin mentioned in your last answer the same one referred to in the previous part of your testimony?

[*Same objection.*]

A. Yes, sir.

Cross-Q. 36. Whom were you working for that season?

[*Same objection.*]

A. Samuel Myers until we had the barn finished; then Martin Kilmore and myself worked on our own hook.

Cross-Q. 37. Were you in Harrisburg for the purpose of testifying at any time before to-day, and if so, when?

[*Same objection.*]

A. No, sir.

Examination taken, reduced to writing, and by the witness affirmed and subscribed to before me, this 6th day of March, 1884.

FRED. M. OTT,
Examiner.

JACOB H. KILMORE.

Adjourned until March 7, 1884, at 10, A. M.

March 7, 1884, 10.30, A. M.

Examination resumed; present, same counsel.

WILLIAM L. TAYLOR, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

My age is forty-seven; I reside at Phillipsburg, Centre county, Pa.; I am a carpenter and contractor.

Q. 1. Did you formerly reside at Marysville, Perry county, Pa.?

A. I did; yes, sir.

Q. 2. When did you move from Marysville to Phillipsburg?

A. I moved my family from Marysville to Phillipsburg the 1st of November, 1882; I left Marysville myself some time about the 15th of August, 1882.

Q. 3. How long had you lived at Marysville before you moved to Phillipsburg?

A. I first came to Marysville in the spring of 1869; I left there in the spring of 1870 and went to Selinsgrove; I was there until December, 1873, and then returned to Marysville where I lived until I moved to Phillipsburg.

Q. 4. While you lived at Marysville, did you know George W. Kissinger who occupied the farm of Thomas Draper on the valley road a short distance back of the village of Marysville?

A. Yes, sir.

Q. 5. It has appeared in evidence here that at one time Mr. Kissinger had a porch and cupola built on the house which he occupied on the Draper farm, and that a Mr. Taylor had something to do with building that perch and cupola; are you that Mr. Taylor and did you have anything to do with building Mr. Kissinger's porch and cupola?

A. I am; I helped to do the work.

Q. 6. Have you any account-book containing your accounts with Mr. George W. Kissinger?

A. I have.

Q. 7. If you have it here, will you please produce it and allow the examiner to copy from it such entries as he may be directed to copy?

A. I will; here it is. [Witness produces the book.]

Q. 8. Will you please point out in this book Mr. Kissinger's account with you?

A. Here it is. [The witness points out the account contained on pages 27 and 46 of the book.]

Q. 29. When were these accounts on pages 27 and 46 of the book written in the book, and in whose handwriting are they?

A. They were written in on the dates set opposite to each item of the account; they are in my own handwriting.

[*Respondents' counsel requests the examiner to copy on to the record at this point the accounts with George W. Kissinger, contained on pages* 27 *and* 46 *of the said book. The accounts are as follows:*]

27

"1875 G. W. Kissinger, Dr.

To putting in box in threshing machine		1 50
Sept 13	To making wheel for threshing machine,	5 00
Dec 13	" 1 days work	1 75
1876	" cash	1 00
January	" 3–4 days work	1 32
May 28	" 3–4 " "	1 32
June 20	" 1 " "	1 75
" 21	" 1 " "	1 75
Sept	" 3 " "	4 25
1877		
Feb 3	" turning 2 wagon hubs	50
Aug 15	" 1–2 days work	87½
" 16	" 1–2 day "	87½
" 24	" 3–4 " "	94
" 25	" 3–4 " "	94
" 27	" 1 " "	1 25
" 28	" 1 " "	1 25
" 29	" 1 " "	1 25

Aug. 30	" 1	"	"		1 25
" 31	" 1	"	"		1 25
Sept 1	" 1	"	"		1 25
" 10	" 1	"	"		1 25
					32 52

Carried over to page 46

46 George W. Kissinger Dr.

Sept 11	to account brought over from page 27				32 52
" 11	" 1 days work				1 25
" 13	" 1 "	"			1 25
" 14	" 1 "	"			1 25
" 17	" 1 "	"			1 25
" 22	" 1 "	"			1 25
" 24	" 1 "	"			1 25
" 25	" 1 "	"			1 25
" 26	" 1 "	"			1 25
" 28	" 1 "	"			1 25
" 29	" 1 "	"			1 25
1878					
July 27	" 7 hours work				1 05"]

Q. 10. Will you look at your accounts on pages 27 and 46 of your book and tell me what is the first item relating to the job on the porch and cupola, and what is the last item relating to that job?

A. I will as near as I can. The first is August the 15th, 1877; that was going across the river and helping Mr. Kissinger's son to flat some lumber across the river from Heck's saw-mill and haul it up to the house; the last item I can give you the date of, but I can't remember what it was for; it was September 29, 1877; it was for doing some work on the cupola or on the porch, I couldn't just say which.

Q. 11. Who assisted you in that cupola and porch job?

A. Mr. Brabson.

Q. 12. While you were doing that work on the porch and cupola, where did you get your meals?

A. I ate breakfast at home and dinner and supper at Mr. Kissinger's.

Q. 13. It has appeared in evidence in this case that at one time Mr. Kissinger had a hydraulic ram put in on the Draper farm to force water from the spring up to a point near the dwelling house; are you able to tell me whether that ram was or was not in and working at the time you did that job of putting up Mr. Kissinger's porch and cupola?

[*Objected to as leading.*]

A. It was in and in working order.

Q. 14. When you were doing that job on the porch and cupola, and

were getting your dinner and supper at Mr. Kissinger's house from day to day, please state, if you know, where the Kissinger family was getting their water for drinking purposes on the table, and where they were getting their water for cooking and other household purposes.

A. They were getting their water for drinking purposes from the spring—carrying it from the spring mostly—and for cooking and washing purposes they were getting their water from the ram.

Q. 15. Were you ever at Mr. Kissinger's place at any time when he was boring log pipes for that ram?

[*Objected to as leading.*]

A. I was.

Q. 16. Do you remember how you happened to be there at the time when he was boring log pipes?

A. I wouldn't like to be positive to say that it was during my first work there. [Witness refers to book.] I done work there for him in December, 1875, and in January, 1876, and March, 1876; I couldn't be positive whether it was when I was there doing that work or when I was there on some other business; I seen him boring some pipes though either when I was working there or when I was there on some other business.

Q. 17. Can you tell in what season of the year it was that you saw him boring those pipes?

A. It was sometime during the winter season.

Q. 18. Are you able to say whether it was during the last winter before you put up the porch and cupola or not?

[*Objected to as leading and as inquiring for guess-work, the witness having already indicated by his answers that he doesn't recollect the time.*]

A. I think it was not the last winter; I think it was longer than that, but I couldn't be positive; I never charged my memory with it and couldn't be positive, but I think it was a year or more before I done that work.

Cross-examined by Mr. Howson:

Cross-Q. 19. Did you continue the business of carpenter and builder down to the time you left Marysville?

A. No, sir.

Cross-Q. 20. When did you quit that business, and in what business were you from the time you quit that business down to the time you left Marysville?

A. I didn't just quit it; there wasn't anything to do at it; I worked at painting some, and at railroading for a while, and then I worked for the railroad company in the shops, and I worked at different odd jobs—house-painting, and chair-painting, and the like.

Cross-Q. 21. I notice in the book which you have produced a charge against Mr. Kissinger as follows: "1878 July 27 7 hours work 1,05; what, if you recollect, was that job, and where was it done?

A. I really don't recollect what the job was; I think it was a small job of work that I done at home for him—at my own place.

Cross-Q. 22. I notice in your book another charge, under date of September, 1876—three days' work $4 25—what was that work and where done?

A. I can't just remember now where it was done or what it was.

Cross-Q. 23. I notice in your book a charge dated June 20, and another June 21, 1876, each charge being for one day's work; what was that two days' job, and where done?

A. I think that was some repairing on the barn for him, but I wouldn't be positive; I think it was that; I know I repaired the barn for him just before harvest, and I think it was in 1876.

Cross-Q. 24. During the years 1876 and 1877, did you visit Mr. Kissinger on any business not connected with your trade?

A. I went, I think, to see him a few times for money.

Cross-Q. 25. Was that before or after you took the job upon the porch?

A. I went before and after, both.

Cross-Q. 26. Down to how late a time did you continue those visits to Mr. Kissinger after money?

A. Until he moved away from there.

Cross-Q. 27. That being when?

A. I think he moved away from there in the spring of 1879.

Cross-Q. 28. Is Mr. Kissinger still in your debt?

A. Yes, sir.

Cross-Q. 29. How long have you been acquainted with Mr. Kissinger?

A. I couldn't really say whether I got acquainted with him in 1869 or after that; I was acquainted with him, I know, during the summer of 1871.

Cross-Q. 30. Have you any book containing charges connected with your business of carpentering and building at Marysville of later date than that which you have produced?

A. I have small books; yes, sir, containing accounts for work done for other parties.

Cross-Q. 31. Do you mean by that that the books referred to don't contain accounts for work done for any of the parties mentioned in this book?

A. They do contain charges against some of the parties mentioned in this book.

Cross-Q. 32. What was the last work of any kind done by you for Mr. Kissinger, and when, to the best of your recollection, was it done?

[*Objected to as new matter not referred to in the examination-in-chief, and as immaterial and irrelevant.*]

A. The last work I did for Mr. Kissinger was in 1878, in September, to the best of my knowledge, and I can't tell what the work was.

Cross-Q. 33. How long, so far as you recollect, were you at that work, and where did you do it?

[*Same objection.*]

A. So far as I can recollect, I was about seven hours at it, and did it in the shop at home—or in Mr. Brabson's shop, rather, where I done most of my work.

Cross-Q. 34. Didn't you eat any meals at Mr. Kissinger's house at any time after you worked upon that porch?

A. I don't know that I did; I don't think I did.

Cross-Q. 35. What member or members of Mr. Kissinger's family did you see obtaining water from the ram as you have testified?

A. I couldn't just say which of the members of the family got the water there.

Cross-Q. 36. What members of the family do you remember meeting while you were taking your meals at Mr. Kissinger's house?

A. Frank was home; Sue was home, and Kate, I believe, was home, and Mr. and Mrs. Kissinger were there.

Cross-Q. 37. None others that you recollect?

A. I don't remember whether Cyrus was at home at that time or not; he was away a good part of the time.

Cross-Q. 38. Have you examined any other of your account-books than the one produced, in order to ascertain whether you did work for Mr. Kissinger?

[*Same objection as to cross-question* 32.]

A. I did yesterday before I came here.

Cross-Q. 39. How many charges did you find against Mr. Kissinger, if any, for work done after the fall of 1877?

[*Same objection.*]

A. Not any in any of my other books.

Cross-Q. 40. Have you no note of the work done, as you supposed, in September, 1878?

[*Same objection.*]

A. It is charged in that book there, [indicating the account book above referred to]; I refer to the item charged under date of July, 1878; I was under the impression that it was in September, but it was in July.

Examination taken, reduced to writing, and by the witnesses sworn and subscribed to before me, this 7th day of March, 1884.

FRED. M. OTT,
Examiner.

W. L. TAYLOR.

Recess until 2, P. M.

GEORGE W. RHOADS, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

My age is twenty-three; I reside at Marysville, Perry county, Pa.; I am a tinner.

Q. 1. How long have you resided at Marysville?

A. Twenty-three years.

Q. 2. Did you know Mr. George W. Kissinger, who formerly lived on Thomas Draper's farm on the valley road just back of the village of Marysville?

A. Yes, sir.

Q. 3. It has appeared in evidence in this case that at one time Mr. Taylor and Mr. Brabson built a porch and cupola on the dwelling-house in which Mr. Kissinger lived at the Draper farm, and that Mr. George C. Strine tinned the porch, and had a boy working for him named Rhoads; do you know anything about the tinning of that porch?

A. Yes, sir.

Q. 4. Who was the boy named Rhoads?

A. It was myself.

Q. 5. How long did you work on that tinning of the porch at Kissingers'?

A. I can't remember just how long I worked at it.

Q. 6. In what year was that, if you remember?

A. In 1877.

Q. 7. Were you learning your trade with Mr. Strine at that time?

A. Yes, sir.

Q. 8. When you were assisting Mr. Strine in that job of tinning the porch, did you have occasion to get any water for any purpose or not?

A. Yes, sir.

Q. 9. Where did you get the water?

A. I got it out of a pipe that came up out of the ground.

Q. 10. Tell us as near as you can where that pipe came up out of the ground.

A. As near as I can tell, about fifteen or twenty feet from the upper corner at the back side of the house, between the house and orchard.

Q. 11. When did you last do any work at Mr. Kissinger's place?

A. On the portico in 1877.

Q. 12. Do you mean at the time you worked with Mr. Strine on the portico?

A. Yes, sir.

Q. 13. Had you ever done any work for Mr. Kissinger, or on his place, before you worked on the tinning job there?

A. Yes, sir.

Q. 14. How many times, if you remember, had you worked for Mr. Kissinger before that tinning job?

A. I can't tell.

Q. 15. More than once?

[*Objected to in view of the last answer.*]

A. Yes, sir.

Q. 16. What kind of work had you done for Mr. Kissinger before that tinning job?

A. I had done different kinds.

Q. 17. Name them.

A. I had cut off corn for him; I can't just remember all the different kinds of work I done for him.

Q. 18. When did you cut off corn for him?

A. In the fall of 1876.

Q. 19. Did you in the fall of 1876 work alone at cutting off corn for him or did anybody work along with you, and if so, who?

A. There was two men and myself; Calvin Keim was one and the other one I can't remember.

Q. 20. While you and Calvin Keim were working there together cutting off corn in the fall of 1876, where did you and he get your dinners?

A. At Mr. Kissinger's.

Q. 21. Do you remember anything about Mr. Kissinger's water supply at that time—where you got the water for washing your hands and for other purposes?

[*Objected to as assuming and leading.*]

A. We got it out of a barrel that set under that pipe.

Q. 22. Do you mean a barrel that set under the same pipe that you mentioned in a former answer?

[*Objected to as leading.*]

A. Yes, sir.

Q. 23. Did you understand at the time where that water that came through that pipe came from and how it was forced up there?

[*Objected to as incompetent.*]

A. I didn't know till they told me.

Q. 24. Who told you, and what did they tell you about it?

[*Objections continued.*]

A. Mr. Kissinger told me that it was forced up by a ram.

Q. 25. Did you ever go down to look at the ram itself?

[*Objected to as leading.*]

A. No, sir.

Q. 26. Did you ever hear the ram in operation, if you remember?

[*Same objection.*]

A. Yes, sir.

Q. 27. Are you acquainted with James C. Zimmerman, Mr. Kissinger's son-in-law?

A. Yes, sir.

Q. 28. Did you ever see him hauling any iron pipes from the village up towards the Draper farm?

A. Yes, sir.

Q. 29. What kind of a team did he have at the time when you saw him hauling the iron pipes?

A. He had a two-horse team.

Q. 30. And what kind of a carriage?

A. He had a lumber wagon.

Q. 31. When was it that you saw Mr. Zimmerman hauling these iron pipes; was it before or after you worked on the tinning job at Mr. Kissinger's house?

[*Objected to as asking for guess-work.*]

A. Afterwards.

Q. 32. Do you know in what year it was that you saw him hauling the iron pipes?

A. In 1878.

Q. 33. How happened you to see him hauling those iron pipes?—what were you doing at the time?

A. I just came out of Mr. Strine's shop when he passed with the pipes.

Q. 34. Do you remember where you were going from Mr. Strine's shop at that moment?

A. Yes, sir; I do.

Q. 35. Where were you going, and for what purpose?

A. I was going up to a place called the Mansion House where there was a lot of men who had come to look for a place for a penitentiary.

Q. 36. Were they talking of locating one of the State penitentiaries there at that time?

A. Yes, sir.

Q. 37. And did you go up to what you call the Mansion House to see the men that you refer to?

A. Yes, sir.

Q. 38. What was going on up there that day?

[*Objected to as immaterial and irrelevant.*]

A. The men came there to look for a location, and there was a big gathering.

Q. 39. Do you remember whether they had a band of music up there that day or not?

[*Same objection, and objected to as leading.*]

A. No, sir; I don't remember.

Q. 40. Do you remember whether they had a tent or booth erected for the sale of refreshments to the crowd, up there that day?

[*Same objections.*]

A. Yes, sir; they had a tent; I don't know about selling the refreshments; they had them there—lemonade, etc.

Q. 41. When were you first spoken to with reference to your knowledge of Mr. Kissinger's hydraulic ram, or with reference to your helping to tin Mr. Kissinger's front porch?

A. As near as I can tell, it was about the last of January, 1884.

Q. 42. Where was it?

A. At Marysville, in my shop.

Q. 43. Who was it that first spoke to your about those things at that time and place?

A. I didn't know the man at all; he was a stranger to me.

Q. 44. Did he have any business at your shop except to speak to you about those matters?

A. No, sir.

Q. 45. How did he introduce the subject—what did he first say?

A. He came in and asked me if I was Mr. Rhoads; and I told him I was.

Q. 46. What did he say then?

A. He said he understood that I knew when that ram was put in.

Q. 47. What did you reply to that?

[*This line of examination objected to as incompetent, especially so far as regards any statements alleged to have been made by this witness.*]

A. I told him I didn't know when it was put in.

Q. 48. What did he say next?

A. He asked me if I helped Mr. Strine to tin that portico.

Q. 49. What was your answer to that?

A. I told him I did.

Q. 50. What next did he say?

A. I can't remember just what he did say.

Q. 51 Tell us all that you remember that he said besides what you have already stated, and tell us what your replies were.

A. He asked me whether that ram was in when we tinned the portico, and I told him it was. He asked me some few other questions; I can't remember what they were.

Q. 52. Did he say whether he had been to see Mr. Strine or Mr. Strine's books or not?

A. No, sir; he didn't say.

Q. 53. Did he make any remarks about Mr. Strine's books?

A. Yes, sir.

Q. 54. What remark did he make about them?

A. He said Mr. Strine's books showed we tinned the portico in 1878.

Q. 55. What reply, if any, did you make to that remark?

A. I told him if Mr. Strine's books showed it was in 1878 they showed wrong.

Q. 56. Did he ask whether you had known of Mr. Kissinger's ram before you tinned the porch or not?

[*Objections renewed to this line of examination, to apply to all succeeding questions upon the same line, on the ground that the witness's statements as to conversations between himself and another during the last few weeks, and as to statements made by himself in that conversation cannot constitute evidence for the party calling the witness.*]

A. No, sir.

Q. 57. Did you tell him whether you had known anything about it before you tinned the porch?

A. No, sir; I didn't.

Q. 58. Did that stranger give his name?

A. No, sir.

Q. 59. Whom did you first tell about that stranger's calling upon you and about the conversation that ensued?

A. Mr. William Fenn.

Q. 60. How happened you to tell Mr. William Fenn about it—did he ask you about it, or did you tell him without his saying anything to you about it?

A. I went over to Mr. Fenn's office to settle our books, and we got to talking about it; he didn't ask me; I thought the suit was over, and I asked him who the man was that was here to see me the other day.

Q. 51. Did he say that he knew who the man was?

[*Objected to as immaterial, irrelevant, and incompetent.*]

A. He said he didn't know who he was, and he asked me what sort of a looking man he was, and I told him as near as I could.

Cross-examined by Mr. Howson:

Cross-Q. 62. How long have you been running a shop of your own?

A. Very near two years.

Cross-Q. 63. Were you with Mr. Strine until the time when you started on your own account?

A. No, sir.

Cross-Q. 64. How long were you with Mr. Strine, and when did you leave him?

A. I was with Mr. Strine about five years, off and on; I can't just remember when I left him—what year it was.

Cross-Q. 65. What year was it you went to him, and what time of year?

A. That I can't tell either, because I never kept no books.

Cross-Q. 66. You say you were with him five years off and on; in what years of the five were you away, and how long, or about how long, in each year were you away?

[*Objected to as calling for guess-work.*]

A. I can't tell in what years I was away, nor I don't know how long at a time; not over a month at a time.

Cross-Q. 67. What were you doing during these months when you were not at work for Mr. Strine?

A. I worked in harvest and worked in ice-cutting.

Cross-Q. 68. You say in your answer to interrogatory 60 that you thought the suit was over; what suit do you mean?

A. This telephone suit.

Cross-Q. 69. How long have you known of this telephone suit, and how did you get to know of it?

A. I heard of it about a year ago; the way I got to hear of it I heard people talking about it.

Cross-Q. 70. Where and what people?

[*Objected to as immaterial and irrelevant.*]

A. I heard of it in Marysville; what people I can't tell; I heard different ones talk about it.

Cross-Q. 71. What made you think the suit was over when you went to Fenn's office?

[*Same objection.*]

A. Because Mr. Fenn was home all week.

Cross-Q. 72. How did you know that Mr. Fenn had anything to do with the suit, and how long have you known it?

[*Same objections.*]

A. I didn't know whether Mr. Fenn had anythiug to do with the suit at all or not.

Cross-Q. 73. Please explain, then, your answer to interrogatory 71.

[*Same objection.*]

A. Mr. Fenn was home, and I went into his office.

Cross-Q. 74. You have said that you thought the suit was over, because Mr. Fenn was at home all week; in the next answer you said that you didn't know Mr. Fenn had anything to do with the suit; I will ask you again, therefore, why you thought the suit was over when you went to Mr. Fenn's office.

[*Same objection; also objected to as already answered.*]

A. Because I heard nothing more about the suit.

Cross-Q. 75. How long was it before you went to Mr. Fenn's office about your books, that you had last heard anything about the suit?

[*Same objection.*]

A. I hadn't heard nothing for about a week or more about it.

Cross-Q. 76. And because you hadn't heard anything about it for so long a time as a week or so, you thought the suit was over; is that so?

[*Objected to as utterly immaterial.*]

A. Yes, sir; that is what I said.

Cross-Q. 77. During the last year, while you were hearing a good deal of talk about this telephone suit, you also heard a good deal of talk about the Kissinger ram, did you not?

[*Same objection.*]

A. I heard some talk about it, of course.

Cross-Q. 78. What other work besides cutting the corn and helping to tin the roof did you do for Kissinger, and when?

A. I said before that I helped to do different kinds of work, but I didn't know what it was, nor I didn't know when it was.

Cross-Q. 79. You have stated that you worked at cutting corn in the fall of 1876 with Calvin Keim, and another man whose name you don't remember; do you know whether this other man was some one living at Mr. Kissinger's place, or some one from outside?

A. He lived in Marysville.

Cross-Q. 80. Do you remember how long you were at that job, and what month, and what time of the month it was?

A. I don't know how long I worked, nor I don't know what month it was; it was in the fall of 1876.

Cross-Q. 81. What job did you work at just after that job at Kissinger's?

A. I went back to work for Mr. Strine.

Cross-Q. 82. What were you doing immediately before that job at Mr. Kissinger's?

A. I was working for Mr. Strine then.

Cross-Q. 83. How often have you been down here to give your testimony in this case?

[*Objected to as immaterial. And respondents' counsel states that by reason of the frequent non-attendance of witnesses when subpœnaed, and the delay and inconvenience arising from that cause, during the fall and early part of the winter, respondents' counsel has latterly been in the habit of having a sufficient number of witnesses on hand in Harrisburg, or subpœnaed at the same time to be on hand, to insure the presence of enough to occupy the time; and this he has done, not only for his own convenience, but the convenience of opposing counsel, who at times, and not without some reason, have made complaints of the interruption of the work of taking testimony through the failure of witness to attend when expected, and at least one of whom has suggested to respondents' counsel the expediency of summoning enough witnesses before hand, and keeping them on hand till their testimony could be reached.*]

A. I have been down several times; this is the sixth time.

Cross-Q. 84. When were you first here for that purpose?

[*Same objection.*]

A. On last Friday.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 7th day of March, 1884.

FRED. M. OTT,
Examiner.

GEO. W. RHOADS.

Adjourned till March 8, 1884, at 10, A. M.

MARCH 8, 1884, 10, A. M.

Further adjournment, at request of respondents' counsel, until March 13, 1884, at 10, A. M.

March 13, 1884, 10, A. M.

Examination resumed.

Present, Mr. Howson for complainants, and Mr. Jacobs for respondents.

JACOB A. GRAHAM, *being produced, sworn, and examined saith:*

Examined by Mr. Jacobs:

My age is 50; I reside at Newville, Cumberland county, Pennsylvania; I am not engaged in any business at present; I have been a hotel-keeper. I have been dealing in produce this winter, until the last two or three weeks.

Q. 1. Were you ever employed as an officer in the United States internal revenue service?

A. Yes, sir.

Q. 2. Under what Presidential administration?

A. Andrew Johnson's.

Q. 3. When did you enter that service, and in what capacity?

A. I was commissioned in 1866 in November, as local inspector at Ahl and Snyder's distillery; it may have been a month before that. The distillery was in Newton township at that time, just outside of the borough limits of Newville, Cumberland county.

Q. 4. How long did you serve as local inspector at that distillery?

A. About three or four months, if my recollection is correct.

Q. 5. If there was then any change made in your official position, please state what that change was.

A. There was; I was made general inspector of the two counties—Cumberland and Perry—of the Fifteenth Congressional district.

Q. 6. Did you or not continue in the internal revenue service after the first inauguration of President Grant?

A. I did.

Q. 7. How long?

A. About six weeks or two months, if I recollect.

Q. 8. Between the time you were appointed general inspector for the two counties of Cumberland and Perry and the time when you quit

the internal revenue service, was there any further change made in your official capacity?

A. Yes, sir. I was appointed store-keeper for the distillery of Clinton D. Patterson, in York county—bonded warehouse-keeper is the proper title. The distillery was on the stream known as Elk creek, near the line of Baltimore county, Maryland.

Q. 9. How far was that distillery from Newville?

A. It must have been, by rail, in the neighborhood of sixty or seventy miles from Newville, I presume—maybe more.

Q. 10. How long before you quit the internal revenue service was it that you were appointed store-keeper or bonded warehouse-keeper at Patterson's distillery?

A. It may have been from five to seven months.

Q. 11. Did you ever hear that Daniel Drawbaugh had a talking-machine at his shop at Eberly's Mills, Cumberland county, Pa.? If so, when, where, and from whom did you hear about it?

[*Objected to as new matter, not rebuttal, and as leading and inquiring for hearsay.*]

A. I did hear that he had—yes, sir; from his brother, Henry F. Drawbaugh, in 1867, at Ahl's distillery.

Q. 12. Will you state how you and he came to be at Ahl's distillery when you heard him speak of it?

A. I was whisky inspector and Drawbaugh was the bonded warehouse-keeper at Wheeler's distillery—let me see, I guess that is wrong. I don't know whether that was when I was local inspector, or after I was made the general inspector.

Q. 13. How did Henry F. Drawbaugh come to mention the talking-machine at that time?

A. The conversation was brought about by his bringing some syrup faucets to the distillery, which he said were the invention of his brother. The faucets were so constructed as to measure molasses or syrup without a measure, as it was drawn; I spoke of it being an ingenious appliance for the purpose; Harry made the remark that it was not anything to what his brother had invented. Said I, "What has he got, Harry?" He said, "He has got a talking-machine." I asked Harry how they used that; he described it to me as one man going to the garret and another to the cellar, or to any part of the house, or from one house to another; and went on to describe it by saying that one man put one end of it to

his ear, and the other man talked into the other end of it. He went on describing until I said, "Harry, you will be as crazy as Dan if you keep on;" and he said, "You will see; it will take the place of telegraphing in the next five years." I said, "You and Dan are both crazy."

[*Mr. Howson objects to alleged statements or declarations of Henry F. Drawbaugh as not evidence.*]

Q. 14. Did Henry F. Drawbaugh enter the internal revenue service before or after you?

A. After.

Q. 15. How long after?

A. It must have been a couple of months, I think; I am not positive—I don't think that Harry was made bonded warehouse-keeper until after I was made general inspector, and that would make it several months; I haven't any records with me to refer to, and it is a long time ago.

Q. 16. Where was he first stationed as bonded warehouse-keeper after he was appointed?

A. At Wheeler's—no, he was at Ahl's and Wheeler's first. Let me correct that. After I was made general inspector, he was appointed first to Ahl's, and then he was made store-keeper over them both, if I recollect correctly.

Q. 17. How far was Wheeler's distillery from Ahl's?

A. The two distilleries were probably five or six hundred yards apart, but the two bonded warehouses were at the same building—one was inside of it and the other was outside.

Q. 18. The Ahl's distillery which you have referred to, I presume, is the same one as that referred to in your 3d answer as Ahl and Snyder's; is that correct?

A. Yes, sir.

Q. 19. How long after your appointment as general inspector was Henry F. Drawbaugh appointed store-keeper or bonded warehouse-keeper at Ahl's distillery?

A. He was placed there right immmediately, sir.

Q. 20. Was he, or not, still in the internal revenue service at the time you quit—soon after the first inauguration of President Grant?

A. I think he was.

Q. 21. Do you know how long he remained in it after you quit it?

A. I do not, sir.

[*Deposition objected to as not rebuttal.*]

Recess until 2, P. M.

Cross-examined by Mr. Howson, de bene esse:

Cross-Q. 22. How long have you been living in Newville?

A. I was born within two miles of Newville. When I was inspector at Ahl's distillery I was living in Newton township; I am now living in the town.

Cross-Q. 23. How long have you been acquainted with Henry F. Drawbaugh?

A. I presume it has been thirty years.

Cross-Q. 24. You say that you have been an hotel-keeper—where, and during what time?

A. I kept hotel in Colorado in 1875 and 1876, and last summer a year ago I kept one at Holly Springs, near Carlisle.

Cross-Q. 25. What were you doing between the time when you kept hotel in Colerado and the time you kept one at Holly Springs, near Carlisle?

A. I was shipping grain; I was in the meat and hide business before I went into the grain business; I was engaged in shipping grain from Missouri to the mines in Colorado; I was one of the firm of Daveny, Stephens and Graham, at Boulder, Colorado; I was also engaged for two years in prospecting and mining.

Cross-Q. 26. When did you go to Colorado?

A. In 1858 or '9 I went there first; I started from the States in 1858 but didn't get into Colorado until 1859.

Cross-Q. 27. How long after quitting the employ of the internal revenue department was it that you went West?

A. I went in 1872 or 1873—I think it was in 1873.

Cross-Q. 28. Between 1869 and 1873 you were living in Newville?

A. Yes, sir, a portion of the time; I spent one season of that interval in selling lightning rods for the Pennsylvania Lightning Rod Company, of Philadelphia.

Cross-Q. 29. What other business or businesses were you engaged in during that period of time—from 1868 or 1869 until 1873?

A. I sold whisky two years; I believe there was not any other business during that period; I was a portion of the time in Hagerstown,

Maryland, and a portion of the time in Newville, Pennsylvania, in the wholesale whisky business.

Cross-Q. 30. When did you come East again after keeping hotel in Colorado?

A. I guess I came back here to Pennsylvania in 1880, probably.

Cross-Q. 31. What were you doing, and where, between 1876 and 1880?

A. I lived in Denver them two or three years.

Cross-Q. 32. What were you doing there?

A. My family was located there and I was engaged in mining operations at Leadville, Georgetown, Black Hawk, Central, Magnolia, Jim Creek and Carabough.

Cross-Q. 33. Did you have any other occupation than mining, and prospecting in Colorado during those two or three years?

A. No, sir; nothing special that I can think of.

Cross-Q. 34. When you came back to Pennsylvania, what business did you go into and where?

A. Buying and selling and shipping stock in the Cumberland Valley.

Cross-Q. 35. How long did you continue that business?

A. From March to the 9th of June, either 1880 or 1882, I am not positive—the year I came back, I guess it was 1880.

Cross-Q. 36. What next did you do, and how long?

A. I left here about the 10th of June and went to St. Louis, and went from there to Lake Minnitonqua, Mississippi; I was trying to buy a steamboat; I spent a month at different points on the Mississippi river, and then returned to St. Louis.

Cross-Q. 37. What, and where next, and how long?

A. At Kansas City; I was trying to buy a light draft steamer to carry railroad supplies; I was at Kansas City some twelve or fifteen days, and at Leavenworth about a month; I was at Osage a few days before I went to Kansas City.

Cross-Q. 38. What business did you next go into, and where?

A. I went into the Cherokee Nation and then came back to Cowley, Kansas, and went into the meat and hide business.

Cross-Q. 39. Till when did you continue that business?

A. I continued that about six weeks, when I was burned out; I began about the first of November and I was burnt out about the 14th of December; I think that was in 1880 or 1882; I am not positive about the date.

Cross-Q. 40. What was your next business, and where carried on?

A. In the same business in the same town, and I continued it until after the 7th of July, 1882, I think.

Cross-Q. 41. Where did you go to next, and into what business?

A. I went to Topeka and Leavenworth, locating lands for the Leavenworth, Topeka and South-Western railroad, then in process of construction. I was not employed directly by the road, but by parties concerned in it.

Cross-Q. 42. How long were you in that?

A. About three months.

Cross-Q. 43. What did you go at next, and where?

A. I came to Newville, Penna., next; I came into the State about the 1st of April, and about the 10th of May I went to Holly Springs and took the hotel.

Cross-Q. 44. What year was it that you kept the hotel at Holly Springs?

A. I don't know whether it was last year or year before. I don't want you to take that down—it was 1883 that I kept it; it will be a year in April since I left there, if I mistake not.

Cross-Q. 45. How long did you keep that hotel, and why did you give it up?

A. I kept it one year—not quite a year—I went into it in May and the year expired in the following April. The place then became infected with small-pox; there was a paper-works in the small village, near the hotel, and the small-pox broke out among the employès.

Cross-Q. 46. What was your next business, and where carried on, and for how long?

A. It was carried on in the Cumberland Valley, Penna., and in North Carolina and Virginia—shipping produce both ways. I commenced about the last of August or first of September; I settled for the last of my goods a week ago to-day.

Cross-Q. 47. Who requested you to come here and testify?

A. I was summoned here by Mr. Henry F. Drawbaugh one day last week; I think it was Friday.

Cross-Q. 48. How long have you known that this suit was going on, and from whom did you learn it?

A. I read of it in the newspapers when I was in Virginia. I think it was in either a Carlisle or a Newville paper that was sent me once a week. It was some time during the last winter.

[*The whole of the cross-examination objected to by Mr. Jacobs as irrelevant and immaterial.*]

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 13th day of March, 1884.

FRED. M. OTT,
Examiner.

J. A. GRAHAM.

GEORGE MURPHY, junior, *being produced, sworn, and examined, saith:*

Examined by Mr. Jacobs:

My age is forty-four; I reside at Newville, Cumberland county, Pa.; I am a shoemaker.

Q. 1. Are you acquainted with Mr. Henry F. Drawbaugh of Newville, Pa.; and if so, how long have you known him?

A. Yes, sir; I have known him since 1863.

Q. 2. Did you ever have any conversation with him about any of the inventions of his brother, Daniel Drawbaugh, of Eberly's Mills, Cumberland county, Pa.?

A. Yes, sir.

Q. 3. When and where did that conversation take place?

A. In the distillery office—the Newville distillery—at Ahl's and Snyder's; it was in April, I think, 1867.

Q. 4. Will you state how that conversation came about, and give us the substance of it?

[*Objected to as not rebuttal and as inquiring for hearsay, or for the witness' representation of the substance of hearsay.*]

A. In April, 1867, Henry Drawbaugh went to Harrisburg with a short car-load of whisky; he came home the next day; he had two or three molasses faucets with him and fetched them into Ahl and Snyder's office in the distillery, and showed them to Isaac Kuhn and myself, and told us they were a patent machine to measure molasses with—that they could measure without a quart measure or gallon measure. The men there made fun of him about it. He said that was nothing; that his brother had a talking-machine at home. He said that they could talk through it from room to room or from the garret to the cellar; I said to him, "Henry, you must be crazy;" he said, "It's so; he has a machine." He said, "It will take the place of telegraphing after while." I heard

him talking several times about it afterwards; I think that is pretty near all that I know about the machine.

Q. 5. How did you come to be in the distillery office at that time?

A. I just happened to drop in from work—into the office.

Q. 6. What work were you employed at, at that time?

A. Running the engine of the distillery.

Q. 7. When did you begin to run the engine of Ahl and Snyder's distillery?

A. The 22d day of November, 1866.

Q. 8. How long did you continue to run it?

A. Till the first of June, 1867.

Q. 9. How did Henry F. Drawbaugh come to be in the distillery office at the time the conversation which you have given took place?

A. To make his report to Dr. Ahl of the car-load of whisky.

Q. 10. In what business was Henry F. Drawbaugh engaged at that time?

A. Store-keeper at Ahl and Snyder's distillery.

Q. 11. Did he, or not, during the conversation which you have given, mention the name of his brother who had the talking-machine, or say where he lived?

A. He lived at the lower end of Cumberland county some place; where it is I can't tell you to-day; he mentioned his name—his brother, Daniel Drawbaugh.

Q. 12. When you began to run the engine at Ahl and Snyder's distillery, on Nov. 22d, 1866, what United States internal revenue officer had charge of the bonded warehouse?

A. Captain Jacob A. Graham.

Q. 13. Who immediately succeeded him in charge of the warehouse?

A. Harry Drawbaugh.

Q. 14. About what time did Harry Drawbaugh take charge of it?

A. I can't recollect whether it was the last of February or first of March, 1867—it was one of them two.

Q. 15. Do you know whether or not Harry Drawbaugh ever had charge of any other bonded warehouse in connection with that of Ahl and Snyder?

[*Objected to as irrelevant and immaterial.*]

A. I did—Jacob M. Wheeler's.

Q. 16. Did he take charge of both at the same time, or not?

A. Yes, sir; he did; after Church had left Wheeler's, then Drawbaugh had them both.

Q. 17. Then, as I understand, Harry or Henry F. Drawbaugh took charge of the Ahl and Snyder bonded warehouse as the successor in office of Captain Jacob A. Graham, and afterwards when the storekeeper at Wheeler's left, he (Drawbaugh) took charge of both; is that correct?

A. Yes, sir.

[*Deposition objected to as not rebuttal and as hearsay, and cross-examination, de bene esse, by Mr. Howson.*]

Cross-Q. 18. How long since, and how did you first learn that this suit was going on?

[*Objected to as immaterial and irrelevant.*]

A. I heard it last summer—the first of it I heard was by parties talking in my shop.

Cross-Q. 19. Who were those parties, or those of them whom you recollect?

[*Same objection.*]

A. The one that I recollect the most talking about it was a man by the name of John Harland.

Cross-Q. 20. How long have you been carrying on the shoemaking business in Newville?

[*Same objection.*]

A. Since the spring of 1876.

Cross-Q. 21. Have you boen living in Newville continuously for the last fifteen or twenty years?

[*Same objection.*]

A. I have.

Cross-Q. 22. What were you doing between the time you quit running the engine at the distillery and the time you commenced shoemaking?

[*Same objection.*]

A. I ran a restaurant from August, 1867, till in the fall of 1868, when I went back into the distillery; I worked there till the next spring. The distillery broke up, I think, in the next fall. I then run

cars for Major Snyder in 1870 and 1871; I was constable three years—1872, 1873, and 1874. In 1874 and 1875 I didn't do much of anything.

Cross-Q. 23. When did you come from Newville to Harrisburg to testify in this case, and who, if any one, came with you?

[*Same objection.*]

A. On the 11th day of March, 1884; Captain Graham and Abraham Killian came with me.

Re-direct by Mr. Jacobs, de bene esse:

Q.Q. 24. When you went back into the distillery, in the fall of 1868 were Ahl and Snyder still running it?

A. No, sir; Mr. Rahter was running it; I forget his first name.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 13th day of March, 1884.

FRED. M. OTT,
Examiner.

GEORGE MURPHY, JR.

Adjourned until March 14, 1884, at 10, A. M.

[*The following deposition is printed out of its regular order, having been suspended and held over until its completion.*]

March 5, 1884, 10.30, A. M.

Examination resumed pursuant to adjournment.

Present, same counsel.

WILLIAM W. SNYDER, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

My age is 63; I reside near Landisburg, Perry county, Penna.; occupation, flour-milling and farming.

Q. 1. How long have you resided where you now live?

A. Since 1854. I learnt my business as miller before that in the same mill that I became the owner of in 1854.

Q. 2. There was a witness examined on behalf of complainants in this case in November, 1882, (see compts.' printed record, p. 622 to 666, inclusive,) who testified that his name was J. C. Zimmerman; that he was then thirty-one years of age; resided at Marysville, Perry county; was a miller by trade, but had been working at railroading for several years;

commenced learning his trade with L. C. Steinberger, at Bridgeport, near Landisburg, Perry county; that his father lived about a mile and a quarter from Landisburg, and that at one time he, the said J. C. Zimmerman, worked for Mr. W. W. Snyder, and run his mill, within a mile of Landisburg, (see compts.' printed record, pp. 622, 623, 626, 642.) Do you know that Mr. J. C. Zimmerman?

A. Yes, sir.

Q. 3. Are you the Mr. W. W. Snyder to whom he refers in his testimony?

A. I must be, as I am the only person of that name in that neighborhood; I am pretty certain that I am the person.

Q. 4. Did Mr. J. C. Zimmerman ever work for you in your mill?

A. Yes, sir.

Q. 5. Have you been in the habit of keeping books, and entering in them, from day to day, entries or memoranda relating to your business?

A. Yes, sir; in my own humble way.

Q. 6. Will you please refer to your books, if you have them here, and state when Mr. Zimmerman worked for you, at any time or times, from the beginning of 1872 to the beginning of 1877, and point out the book-entries relating to such work, in order that the examiner may copy them upon the record?

A. Yes, sir; here they are. (Witness produces books.) There was no work done by Mr. Zimmerman for me in that time until the second day of January, 1873, when he commenced; I don't think there is any remark on the book as to when he quit that job, as he was just a loose hand; I have a memorandum in the book dated Saturday, Feb., 22, 1873, which refreshes my memory and enables me to remember that on that day he started to Harrisburg with my son; Zimmerman didn't come back; I remember now distinctly that that was the way my son got to find the way to Harrisburg. The next time he came to commence work for me was Tuesday, the 4th day of January, 1876, and worked until Monday, the 24th day of January, 1876, when he quit and left. These dates are fixed by entries in my book, which I now point out. The book is a kind of a diary, written down by me regularly every evening from day to day, and contains memoranda of the weather and of the time of my employès and so forth.

[*The entries pointed out by the witness in said book are as follows:*

"72 James C. Zimmerman commenced Friday morning the 3 January @$12 per month.

January 1, 1873 Hands Time

A. Baker
L. Sweager
C. Rice.

Wed 1st Moderating thawing a little
Thurs 2 Rained and drizzled all day James Zimmerman came this evening
Fry 3 Thawing (Bower and I went to Bloomfield and Sammy also with flour
Sat 4 Colder not much thawing Broate Bull & paid $15.00"]

[*Then follow other miscellaneous entries to February* 22, 1873, *under which date is the following entry:*

"Sat 22 Boys Zimmerman and Sammy
Started for Harrisburg *No hand* he settled
PAID"

The entries of the first four days of January, 1876, *are as follows:*

"108 Hands

Lewis Sweager
Wm Duncan
George Easterline
John Sweager
Jan 4 1876
James Zimmerman commenced.

January 1 1876 Time book for working
Sat 1 Cloudy and soft and muddy,
Sunday 2 Cleared off, warm and pleasant,
Mon 3 clear and pleasant; Saml to Bloomfield flour
Tues 4 Clear and do James Zimmerman came to work in mill"

Then follow other miscellaneous entries from day to day till January 24, 1876, *on which date is the following entry:*

"Mon 24 Pleasant—Jim Zimmerman quit,
Work and left"]

Q. 7. This book, from which the above entries are taken, appears to be a diary running consecutively from some time in 1869 to the beginning of March, 1884; is such the fact?

A. Yes, sir.

Q. 8. Will you please look at this diary through the month of November, 1875, and state whether it contains any entry during that month—any entry relating to James C. Zimmerman?

A. Yes, sir; it does, for the short period of three days; they were

Friday, the 12th, Saturday, the 13th, and Monday, the 15th; those are the only three days that he worked in that month; underneath them and immediately opposite the figure "19" is the figure "3," and the word "paid" under it.

Q. 9. After James C. Zimmerman quit your service on Monday, November 15, 1875, does your book show who took his place?

A. Yes, sir; George Easterline took his place on Monday, the 29th; he worked one day.

Q. 10. Does your book show what hands you had employed in the month of December, 1875?

A. Yes, sir.

Q. 11. State the names of all of your hands in that month?

A. William Duncan and John Sweager; that was all in that month.

Q. 12. In examining your book for January, 1874, I find the name of J. Zimmerman; will you please state whether he did any work for you in January, 1874, and if so, when and how long?

A. Yes, he did; from Monday, the 19th of January, 1874, up to Friday, the 23d—four days and three quarters; marked paid.

Q. 13. Will you please refer to your diary for the month of August, 1873, and particularly from Tuesday, August 12, to Monday, August 18, 1873, inclusive, and point out to the examiner the entries during that time so far as they may relate to the weather, in order that he may copy them upon the record?

A. Yes, sir.

[*Witness points out the following entries:*

"Time-book, August, 1873. 79

* * * * * * * * *

Tue 12 Shower.
Wed. 13 Rain all day; I went to Carlisle for cornsheller
Thurs 14 Rain all day again; creek high-water in the mill
Fry 15 Rain till noon; Saml went to Elliottsburg—flour
Sat 16 Cloudy and cold—sawing—water still high
Sun 17 Cool and cloudy
Mon 18 rain again—taking flour to town."

[*Entries objected to by Mr. Hoowson as not evidence of the facts therein stated.*]

Q. 14. Are those entries from August 12 to 18, 1873, correct as to the condition of the weather and water at that time, or not?

[*Objected to as incompetent unless the witness is willing to be qualified*

that he distinctly remembers, independently of the book entries, the condition of the weather during the time mentioned and on those particular days.]

A. Yes, sir; they are correct.

Q. 15. Have you here any receipt-book containing any receipt signed by said James C. Zimmerman for money paid to him by you; if so, will you please produce it in order that it may be copied on to the record?

A. Yes; here it is.

[*Witness produces receipt-book containing the following receipt:*

"87.11—Received of William W Snyder
Janv 24th 1876 seven dollars & 11 100 dollars
in full for milling for him to date having
settled heretofore & received payment for all,
time in full
J. C. Zimmerman."]

[Witness continues.] The reason I put that remark in the receipt was: I hadn't taken his receipt for the two small previous payments, and he was considered a young man who would bear to be watched; that is the reason I put that singular remark in the receipt.

Q. 16. Have you produced here all the books kept by you in 1875 and 1876, and containing memoranda of the time of your employés commencing and quitting work in those years?

A. Yes, sir; all that have a record at all; there is miscellaneous hands that I pay for doing little odd jobs and chores of a half a day or a day, that are not entered in the book; there is no record kept except of such as I expect to keep two or three days at a time; there is another explanation I will make. You see there is a blank in the book; two years ago I sold my personal property and rented my farm; and my miller I have since that time hired by the year, and his time does not appear in the time book; this accounts for the fact that the book shows so little time of hands working for me during the last two years; the blank in the book is after November, 1883, and after that time I did not enter memoranda so fully, as I was not required to do it; my business didn't need it.

Q. 17. Do you find anywhere in your books any memorandum relating to said James C. Zimmerman in these words, to wit: "Commenced November 16th, 1875, and quit January 26, 1876?"

A. No—with this exception; that it embraces the latter part of a period that I have an account of; it didn't commence in November but commenced in January, and ended, not on the 26th, but on the 24th.

that he distinctly remembers, independently of the book-entries, the condition of the weather during the time mentioned and on those particular days.]

A. Yes, sir; they are correct.

Q. 15. Have you here any receipt-book containing any receipt signed by said James C. Zimmerman for money paid to him by you; if so, will you please produce it in order that it may be copied on to the record?

A. Yes; here it is.

[*Witness produces receipt-book containing the following receipt:*

"$7,14—Received of William W Snyder
Jany 24th 1876 seven dollars & 14-100 dollars
in full for milling for him to date having
settled heretofore & received payment for all,
time in full
J. C. Zimmerman."]

[Witness continues.] The reason I put that remark in the receipt was: I hadn't taken his receipt for the two small previous payments, and he was considered a young man who would bear to be watched; that is the reason I put that singular remark in the receipt.

Q. 16. Have you produced here all the books kept by you in 1875 and 1876, and containing memoranda of the time of your employés commencing and quitting work in those years?

A. Yes, sir; all that have a record at all; there is miscellaneous hands that I pay for doing little odd jobs and chores of a half a day or a day, that are not entered in the book; there is no record kept except of such as I expect to keep two or three days at a time; there is another explanation I will make. You see there is a blank in the book; two years ago I sold my personal property and rented my farm; and my miller I have since that time hired by the year, and his time does not appear in the time book; this accounts for the fact that the book shows so little time of hands working for me during the last two years; the blank in the book is after November, 1883, and after that time I did not enter memoranda so fully, as I was not required to do it; my business didn't need it.

Q. 17. Do you find anywhere in your books any memorandum relating to said James C. Zimmerman in these words, to wit: "Commenced November 16th, 1875, and quit January 26, 1876?"

A. No—with this exception; that it embraces the latter part of a period that I have an account of; it didn't commence in November but commenced in January, and ended, not on the 26th, but on the 24th.

Q. 18. Then, if I understand you, your books do not contain the following sentence or words, to wit: "Commenced November 16, 1875 and quit January 26, 1876."

A. No, sir; they do not.

Q. 19. Then the statement of Mr. Zimmerman on page 627 of complainants' printed record, answer 50, to the effect that your books contained those words, is not true; is it?

[*Objected to as assuming.*]

A. No, sir; it is not true—not correct.

Q. 20. Mr. Zimmerman, on p. 642 of compts. printed record, cross-answer 210, testified as follows:

"About the first of November I moved my family to Marysville; I then went back within a mile of Landisburg, run a grist mill for W. W. Snyder from the 16th of November 1875 till January 26, 1876."

Is it true that Mr. Zimmerman ran your grist-mill from Nov. 16, 1875, till Jan. 26, 1876?

A. No, sir; not from the respective dates.

Q. 21. Mr. Zimmerman, in the same answer, testifies as follows, to wit:

"This is a memorandum I just wrote off from Mr. Snyder's books," and then the memorandum which he referred to was put in evidence on the same page, and is in the following words, to wit:

"Commense
Milling November
the 10th 1875
and quit
January the 26 1876."

Is it true that your book contained that memorandum testified to by Mr. Zimmerman?

[*Objected to as not rebuttal, Mr. Zimmerman not having testified that he took those words from the witness's books.*]

A. No, sir.

Q. 22. How far is Landisburg, Perry county, from Eberly's Mills or Milltown, Cumberland county?

A. By the way of Carlisle it is thirteen miles from Landisburg to Carlisle, and from Carlisle to White Hill I would suppose it to be about fifteen miles; White Hill is about three quarters of a mile from Milltown—according to my reckoning Milltown would be about twenty-nine miles from Landisburg.

Q. 23. Have you had any relative or family connection living at Eberly's Mills; if so, who?

A. Yes; my wife's cousin, a Mrs. George Leonard.

Q. 24. Was she the wife of George Leonard who at one time owned the grist-mill at Eberly's Mills?

A. Yes, sir; that is the gentleman.

Q. 25. Did you ever visit Mr. George Leonard's family at Eberly's Mills; if so, how many times?

A. Yes; once.

Q. 26. When was that visit?

A. There is a record of it in this diary which I have produced here—February 4th, 1873; on the 5th I came home.

[*Respondents' counsel requests the examiner to copy on to the record at this point the entries in the diary from the beginning of February*, 1873, *to and including the 5th of February*, 1873. *The entries are as follows:*

"Feb 1873 Time of working Hands

I. Kuhn,
G. Easterline,
Wm. Duncan,
C. Rice,
L. Sweager,

"Sat 1 Cold and frosty.
Sun 2 Cloudy
Monday 3 Snowed 4 inch; I and family to Carlisle.
Tue 4 Pleasant in forenoon;—rain in afternoon—family and I went from Carlisle in the cars to Mr. Leonard's near Harrisburg.
Wed 5 Thawing all day; I and family came home."

Recess until 2.15, P. M.

Q. 27. What members of your family were with you on that visit?

A. My wife and youngest son.

Q. 28. Do you know Mr. Daniel Drawbaugh, of Eberly's Mills; if so, when did you first become acquainted with him?

A. Yes; from that date I have known him—not before that; I met him on the 5th of February, 1873, when we went down to Mr. Leonard's; we didn't go over the first day we were down; I remember that distinctly; we were fatigued too much the first day, and the ground was wet.

Q. 29. How happened you to make his acquaintance that day?

A. It was through a remark of Mr. Leonard, my wife's cousin's

husband; he asked me whether I wouldn't go with him down and see a great genius, or something of that intention; he either said a great genius or a great machinist—I don't recollect which; I am pretty confident that he made the further remark that induced me to go down, that he was an inventor of new ideas and things; I can't say that he adverted to any particular inventions, but I am pretty certain that that was what induced me to go down.

Q. 30. And did you and Mr. Leonard go down to Mr. Drawbaugh's shop that time?

A. Yes, sir.

Q. 31. Whom did you find at Mr. Drawbaugh's shop?

A. I found this gentleman that they call Daniel Drawbaugh, and was introduced to him by Mr. Leonard.

Q. 32. Have you ever been at Mr. Drawbaugh's shop since that day?

A. No, sir.

Q. 33. What, if any, new inventions did you see at Mr. Drawbaugh's shop that day?

A. He showed me two, if not three, different apparatuses.

Q. 34. What did he call them?

A. I presume that they were called models or operating machines; that was what I presumed they were; there was a cluster on his table that he pretended he was completing; he followed up several explanations, but I can't say what he said they were all intended for, but one, that I distinctly remember; and that was the talking-machine or conversing-machine; I can't remember what he called it or whether he had any particular name for it, but one remark I remember that excited my doubt, and that was that it was intended to surpass the present telegraph system; I meant when I said surpass that he alluded to the present telegraph system; because he made the remark that he could converse as far as Carlisle; he made that remark when I asked him.

Q. 35. What did you ask him that brought out that remark?

A. He had been, to the best of my knowledge, explaining to me how speedy he could communicate with persons at a distance—had been explaining the working of his machine, which induced me to ask him how far it would answer the purpose.

Q. 36. And what was his answer to that question?

A. He remarked that he could converse with me at Carlisle—I remember Carlisle. He must have seen my doubtful appearance for he became a little fidgety, and said—"Oh, we have got it to work here on

short distances;" to me it seemed so ridiculous that I thought the man was beside himself.

Q. 37. Did you understand, from his description and statement at the time, that the machine was intended to be talked into, and that a person at a distance could hear the talk through the machine?

[*Objected to as leading and incompetent.*]

A. That was my understanding of it.

Q. 38. Was Mr. George Leonard present in the shop with you while this conversation was going on?

A. My impression now is that Mr. Leonard, after introducing me to Mr. Drawbaugh, having a mill on his hands at the time, took his excuse and left us, saying that he would go to the mill, which wasn't very far from the shop—the mill that he owned; my impression is that he wasn't there a very great while.

Q. 39. And if I understand you, when Mr. Drawbaugh told you what this machine of his would do, you looked upon him as a crazy man?

[*Objected to as leading.*]

A. The phraseology is rather harsh, but, if I am allowed to change it, I did think—as you gentlemen call it—he was getting to be a little cranky just on that one subject; I had great sympathy for him; I remember that distinctly.

Q. 40. Do you remember when you first heard of the Bell telephone?

A. Not distinctly, but it was either in the latter part of 1876, or 1877; I read of it the first I heard of it.

Q. 41. Do you remember what you thought about it at that time?

[*Objected to as incompetent.*]

A. I think I do; not being informed—not having continuous information of passing events—I supposed that it was Drawbaugh's invention bought over or transferred to this gentleman, Bell; that was my impression, ignorantly formed, for a long while.

Q. 42. It has appeared in your deposition that between the 12th and 18th of August, 1873, the water was so high at your place as to come up into your mill; was that a common occurrence at your mill or not?

A. Not; it was unusual; it never occurred since.

Cross-examined by Mr. Howson:

Cross-Q. 43. Who was working as miller in your mill in December, 1875, according to your recollection?

A. I was generally by times miller myself; I wouldn't be able to tell you without referring to my book. (Witness refers to book.) If I find no column upon any intermediate—between the date of December 1, 1875, until the 3d of January, 1876—I will say most positively that I was miller myself, with the assistance of my minor help, because that often occurs—did occur then; now, it don't; I was a practical miller myself as long as I could be, and done very often without help.

Cross-Q. 44. Do you wish to be understood as testifying that it is a fact, within your recollection as assisted by the book to which you have referred, that during the month of December, 1875, you had no miller in your employ?

A. Not unless I can find it recorded in that intermediate time. (After referring to book.) No one but myself—this I corroborate—no one but myself, assisted by my son; here is something refreshes my memory most vividly; my son David took me to Carlisle on the 27th of December, 1875; he was one of my minor help; I had another son, Samuel; this son David was the best of my minor millers that I had; my other son Samuel stayed at home that day and ran the mill—that is, he only ground chop, which does not require much skill; and this reminds me of a remark as truthful as any I ever made—that on Monday, the 27th—cloudy—David, the best miller of my two minor sons, took me to Carlisle; he was sent home with the horse and buggy—that I don't find here, but that was the circumstance—having wished to go to Carlisle to make some clothing purchases, I took the cars and went on to Philadelphia; this son David that took me to Carlisle was the most efficient wheat grinder of the two sons; I ordered him home to take charge of the mill until I should return, which he did the same day, on Monday, the 27th.

Cross-Q. 45. Are we to understand you as saying that if, at any time during this month of December, 1875, a miller, not a member of your family, had been at work in the mill, his time would have appeared on this book from day to day?

A. I think so; yes, if he was a stranger—if he wasn't of my family—that is in that month.

Cross-Q. 46. My question was a general one; what I want to know is whether you are willing to say that you at no time had a miller, not a member of your family, whose time does not appear in this book—referring, of course, to the period of time covered by the book.

A. I think not, unless this same Mr. Zimmerman might have been

there in the beginning of the month for a day; just as I said before, I often had a man working for a day and would just pay him off in the evening and say no more about it; if he worked three days I think it would be there.

Cross-Q. 47. In point of fact your time-book does not show on what particular days or on what number of days Mr. Zimmerman was milling for you in January, 1876, does it?

A. No, sir; there is one—in the month of January he worked by the month and I had no occasion—there is just a remark here that he worked for me and when he quit, and there is a receipt in the receipt-book that covers that period.

Cross-Q. 48. Is there anything in the book upon which you base the statement, in your last answer, that in the month of January, 1876, Mr. Zimmerman was working for you by the month?

A. I don't think there is; there is nothing in that book that says that he worked by the month, but the time of his beginning and the date of his quitting is most clearly shown by the receipt in my receipt-book covering that period of payment.

Cross-Q. 49. Do you remember what rate of wages you were paying him per month at that time?

A. I could not, for the reason that Mr. Zimmerman frequently dropped in and proposed to work very low, for the sake of getting a little money.

Cross-Q. 50. In your answer to question 48, you tell us that the time of Mr. Zimmerman's beginning work and the date of his quitting work is most clearly shown by a receipt in your receipt-book covering that period of payment; what is there about that receipt that shows you when Mr. Zimmerman began work?

A. The date I paid him here is January 24th, 1876, and the amount is $7 14; I will tell you, if you will allow me to make the explanation: from the fact that it states for milling for me—or, as he states, "for him" (Snyder)—to date, and the date corresponds to the date when he quit work. It is my habit to settle with a man when he quits work.

Cross-Q. 51. That doesn't answer my question, which is, what there is about that receipt which clearly shows, as you have asserted, the time at which Mr. Zimmerman went to work for you, as well as the time when he quit?

A. I would answer that, that it is my positive recollection that it

was for that work; there is nothing about the receipt which shows, but it is my positive knowledge that it was for that work.

Cross-Q. 52. Where, if you remember, was Mr. Zimmerman living while he was in your employ in the beginning of 1876?

A. I would say I couldn't tell, because he often had no permanent place; he had a grandfather living continuous to our place—within four miles—where he frequently called at and served him outside duties for a week or ten days; and then he had other relatives—brother-in-laws with whom he held up a few days sometimes, when he was out of employment.

Cross-Q. 53. You have stated that Mr. Zimmerman's engagement was by the month; do you remember whether he was to receive money wages only, or was to receive pay in other ways, and if yes, in what other ways?

A. Latterly, for the last four or five years, I may say he was paid in money, but while he was a minor when he worked for me I settled with his father; then his father ordered me to procure him a good suit of clothes, which I did; I took him to Carlisle and bought him forty-five or fifty dollars' worth of clothing for services rendered while he was a minor, and charged them in the account with his father.

Cross-Q. 54. I notice in this time-book references to a day-book; have you your day-book for 1875 and 1876 here, and if not, will you please produce it?

A. I haven't it here; I will produce it; it is at my home in Perry county.

Cross-Q. 55. Have you also a cash-book for the same period—1875 and 1876—and if so, will you please produce it also?

A. Yes, sir.

[*By consent, the deposition of this witness is suspended till Tuesday, March* 11, 1884, *when he is to attend with said books.*]

Examination of W. W. Snyder resumed March 15, 1884.

Present, Mr. Storrow and Mr. Howson for complainants, and Mr. Hill, for respondents.

Cross-examined by Mr. Howson:

Cross-Q. 56. Have you with you and will you produce the books called for in cross-questions 54 and 55?

A. Yes, sir.

Cross-Q. 57. Please examine said books and point out any entry or entries you may find therein of moneys paid to or on account of James Zimmerman, between the 1st of November, 1875, and the 1st of February, 1876?

A. I have examined them and did not see any, but I will look over them again. (Witness examines books.) I can't find it.

Cross-Q. 58. I notice on page 51 of what purports to be your day-book for the period between January 1, 1875, and October 20, 1880, an entry under date of 20th of December, 1875, and reading as follows: "James Zimmerman Dr., to cash paid J. A. Bower, boots, $4 75," the word "paid" being written on the margin; also, on the next page (52) of the same book, I find under date of December 23, 1875, the following entry: "James Zimmerman, Dr., to amount paid David Reiber for him, $1 73," and in the margin of the entry the word "settled;" the James Zimmerman referred to in these entries is the James Zimmerman referred to in your examination-in-chief, is he not?

A. Yes, sir; that is the same James Zimmerman.

Cross-Q. 59. What were the transactions referred to in these entries?

A. I haven't any particular recollection, but I must have been in debt for some service, either by job work or a few days in the mill; probably it will explain itself in my time-book, by which I mean the book referred to and from which extracts were made in my sixth answer.

Cross-Q. 60. In answer to cross-question 57, you tell us that you had already examined these books of yours and have found no entries therein referring to Mr. Zimmerman; it now appears that there were two entries in your day-book which you had overlooked; please examine your cash-book again and tell us what, if any, entry or entries you find relating to James Zimmerman between the 1st of January, 1875 and the 1st of February, 1876.

[*Witness examines book.*]

A. I find a charge as follows, but don't know whether it refers to James Zimmerman, or his father, or his brothers.

"Dec 1875.
Mon 27 to cash and cash paid Zimmerman 1,20 10.69"

In January, 1876, I find the following entries:

"Jan 24 to cash paid J. Biseline and J. Zimmerman .34 16.15
Tues 25 to cash paid J. Zimmerman an error 6.08 1.80"

I remember the error distinctly; I paid him too little for the twenty days' work done in January, and he came back and convinced me and I

paid him the $1,80 more; this is the money noticed in his receipt which I exhibited last week; the entries in the first column relate to cash received that day from any source, and the entries in the second column to cash paid out; there is only one line for each day in the cash-book.

Cross-Q. 61. Had you examined these day-book and cash-book of yours for entries referring to Mr. Zimmerman before you came here last week to testify in this case?

A. I examined my ledger; I found no account opened out against James Zimmerman for the period in question.

Cross-Q. 62. What is the date of the last account in your ledger against James Zimmerman?

A. I have no particular recollection, but I think the last settlement was in 1870 with his father, as he was a minor then; that is to the best of my memory; the books will tell.

Cross-Q. 63. Who was the next miller employed by you after Mr. James Zimmerman finally left you?

A. I have a sickly son who I know millered for me in December, 1875, while Mr Zimmerman was not there, and also filled the period after the 24th day of January, 1876, until some time in April, 1876; I mean for the balance of the month of December, 1875, that Mr. Zimmerman was not there; because, perhaps, my time-book will show that he was there in December; I am not certain about that.

Cross-Q. 64. Does your time-book show that he was there in December?

A. No, sir; I can't see it; that was my first impression but I didn't know; he was there in November of that year.

Cross-Q. 65. This time-book of yours shows that Mr. Zimmerman was working for you day's work on the 12th, 13th, and 15th of November, 1875, but does not show him to have been there after November 15, 1875; is that correct?

A. Yes, sir; unless I just called him in for a day at a time, as he was a near neighbor living there with his father-in-law, and paid him cash; I will not say that he was there any more than the book will show, but he might have been, just for a day or so, but not in the mill; he might have helped me on the saw-mill; I alluded above to the flouring-mill.

Cross-Q. 66. I will now ask you to examine again this day-book of yours, and see whether you find there still another entry, or entries, re-

lating to this James Zimmerman, during the period between the 1st of November, 1875, and the 1st of February, 1876.

[*Witness examines book.*]

A. I find that on the 16th day of November, 1875, the following entry: "16 James Zimmerman commenced work this morning at twelve dollars per month at the business of milling," and in the margin the word "settled." That accords with the time I have shown here at the other examination of three days and a half work under that.

Recess until 2.30, P. M.

Cross-Q. 67. Will you please explain a little more fully how you—to use your own expression—find the entries in this day-book and those in the time-book to accord?

A. I think that these three days in the month named [indicating entries in time-book for 12th, 13th, and 15th of November, 1875,] are the results of this remark in the day-book of the 16th of November—that he commenced milling for me; for it is only an entry of the understanding between us, and these three days must be the only services rendered by Mr. Zimmerman under this intention in that month of November, 1875; I believe that the discrepancy between the respective dates is due to an error I made in the day-book, but not in the time-book.

Cross-Q. 68. Do you mean by that that you believe the entry in the day-book should have been the 12th instead of the 16th?

A. No, sir.

Cross-Q. 69. Well, what is the error?

A. I believe that at the date of the 15th, then the intention was that he intended to work for me by the month, and that the remark there on the 16th was a contract he intended to fulfil, because it says there expressly by the month, and this time in the time-book was by the day, at outside work; it shows that he was husking corn.

Cross-Q. 70. That doesn't yet explain what you mean by saying that you thought there was an error; what error do you think there is in these entries, and in which of them?

A. I believe the error that I made was by placing that remark in the day-book on that day, for there is no credit there, nor no charge.

Cross-Q. 71. Do you mean by that to give us to understand that when you wrote that entry in your day-book you made a mistake; and what was the mistake?

A. I believe the intention was that he was to continue on to work for me by the month, and it is recorded there.

Cross-Q. 72. Who came to see you for the defendants about the time of Mr. Zimmerman's working for you?

[*Objected to as immaterial.*]

A. I can't say that there was anybody there—not to my recollection—not while he was working for me.

Cross-Q. 73. What I wish to know is, who came to see you lately to inquire about the time or times that Mr. Zimmerman was in your employ?

[*Same objection.*]

A. Harry W. Drawbaugh.

Cross-Q. 74. When was it that he came to see you, and did he ask to see or did you show him any of your books?

[*Same objection.*]

A. I would not be able to give any particular dates, but it was since last harvest. He has been passing there and called several times; my recollection is that he asked me whether James Zimmerman run my mill from sometime in November, 1875, until the 26th of January, 1876. I think that was the question that he put to me. My reply to his question was, "My recollection is somewhat frail of late of anything that I have a record of, but we will go in and look at the books;" and I showed him the books that I have here, and helped him hunt up all the time that James Zimmerman worked for me within the dates.

Re-direct by Mr. Hill, de bene esse:

Q. Q. 75. What books did you show him?

A. I showed him the time-book for one, finding no continuous services by James Zimmerman from the date named, and finding that if I had had his continuous services the date would be found in my ledger; which we examined and found nothing. It is a custom that I have made ever since I have been in business, that loose transient hands I gave no space in that book but paid them for any services rendered, and marked the time in the time-book.

Q. Q. 76. When you came down here to testify last week, you brought your time-book and your receipt-book, and when I asked you before you went on the stand, if you had any other book containing entries relating to Zimmerman's work, you stated in reply, in substance,

that you had examined your other books with reference to that matter, and found nothing in them relating to Zimmerman except away back in 1871, and prior to that time, when he was a minor and worked for you, and you settled with his father; is not that the fact?

A. Yes, sir; I made that statement with the addition: "unless some further services were found in my time-book," I think that was my answer.

Re-cross by Mr. Howson:

Re-cross-Q. 77. Please look at the entry in your diary or time-book under date of Monday, September 18, 1876, and read the entry as it stands on the book in order that the examiner may note it on the record.

A. It is as follows:

"Monday 18 Rained all night. Creek high; took some fence along lower field and both flood-gates on the Zimmerman lot; was in the mill about 2 feet; no strange hands here, but boys scrubbing out mill, etc."

Re-cross-Q. 78. As I understand that entry the water was so high on that occasion as to stand two feet in the mill; is that correct?

A. Yes, sir; I remember that distinctly; it caused me a great deal of trouble.

Re-re-direct by Mr. Hill:

Q. Q. Q. 79. You didn't remember that when you testified in chief, did you?

A. No, sir; I must have misunderstood the interrogatory, and thought it referred to a time subsequent to that time.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 15th day of March, 1884.

FRED. M. OTT,
Examiner.

WILLIAM W. SNYDER.

March 14, 2, P. M.

Examination resumed.

Present, Mr. Storrow for complainants, and Mr. Jacobs for respondents.

GEORGE S. BRICKER, *being produced, sworn, and examined, saith:*

Examined by Mr. Jacobs:

My age is thirty-nine; I reside in Newville, Cumberland county, Penna.; I am buying timber at the present time.

Q. 1. Are you acquainted with Henry F. Drawbaugh, of Newville?

A. Yes, sir.

Q. 2. How long have you known him?

A. I have known him since about 1863 or 1864.

Q. 3. Did he ever tell you about any of the inventions of his brother, Daniel Drawbaugh?

[*Objected to as asking for hearsay, as too remote and as incompetent.*]

A. Yes, sir.

Q. 4. What inventions of his brother Daniel did he tell you about?

[*Same objection*]

A. I have heard him speak of his faucet, talking-machine, and electric clock—I believe he called it.

Q. 5. When and where did he tell you about his brother Daniel's talking-machine?

[*Same objection.*]

A. Some time in September, 1869, at my home in Newville, Harry Drawbaugh told me that his brother Daniel had a good thing, and he called it a talking-machine. He told me that he had it in use about his shop or home— I don't know where his residence was, but at his home. I don't know whether he said Eberly's Mills or the other place; he went on to tell me then that as soon as they would get it completed, they were going to use it in place of the telegraph; why I say "the other place," is because I don't know which of the two places Daniel Drawbaugh lived at—Eberly's Mills or Milltown.

Q. 6. Have you ever been to Eberly's Mills or Milltown?

[*Same objection.*]

A. No, sir.

Q. 7. How do you fix September, 1869, as the time when this conversation took place between Harry Drawbaugh and yourself?

[*Same objection.*]

A. By reason of being home on a visit from Jersey Shore, Lycoming county; I was employed there with A. H. McHenry, civil engineer, as chainman.

Q. 8. What work, if any, had you been engaged on prior to making that visit home to Newville?

A. We had been running some county lines and other land surveying.

Q. 9. What work were you engaged on directly after your return from that visit home?

A. We done a little work at Ramm's Camp, and then we went on to the Clinton and Potter county line next.

Q. 10. If you have any book containing entries showing the work you were doing immediately before and immediately after that visit, will you please produce it and point out said entries to the examiner in order that he may make a copy of them upon the record?

A. I have. [Witness produces book.] Here are the entries of work done in August, prior to my visit home.

[*Witness points out the following entries on page* 4*:*

"4 Dr. Capt A. H. McHenry in account with George S. Bricker, 1869,

* * * * * * * * * * * *

August	9	To one day chaining - - -	$2,50	
	10	" - - -	2,50	
	11	" - - -	2,50	
	12	" - - -	2,50	
	13	" - - -	2,50	
	14	" - - -	2,50	
	16	" - - -	2,50	
	17	" - - -	2,50	
	18	" - - -	2,50	
	19	" - - -	2,50	
	20	" - - -	2,50	
	21	" - - -	2,50	
	23	Hores hire to Kippenose Valley -	4,50	Paid
	23	One day traveling - - -	2,50	
	30	" - - -	2,50	
	31	" - - -	2,50	
			121,50	
August	31	to balance due me - - -		53,75

Transferred to page 6]

The next work then was on October the first, and that was done right after my return from the visit.

[*Witness points out the following entries on page 6:*

"6 Dr. 1869

"A. H. McHenry in account with George S. Bricker

1869

Aug 31 To balance transferred from page 4, 53.75"

"6 1869

A. H. McHenry in account with George S. Bricker.

Dr.

1869

Aug 31	To Balance Transferred from Page 4	- - -	53.75
Oct. 1	To one day chaining	- - - - - -	2.50
2	" " " "	- - - - - -	2.50
13	" " " "	Ramm's	2.00
14	" " " "	- - - - - -	2.00
15	" " " "	- - - - - -	2.00
	Potter & Clinton		
October 18	To one day chaining	- - - - -	2.00
19	" " " "	- - - - -	2.00
20	" " " "	- - - - -	2.00
21	" " " "	- - - - -	2.00
22	" " " "	- - - - -	2.00
23	" " " "	- - - - -	2.00
25	" " " "	- - - - -	2.00
26	" " " "	- - - - -	2.00
27	" " " "	- - - - -	2.00
28	" " " "	- - - - -	2.00
29	" " " "	- - - - -	2.00

Q. 11. How long were those entries made after the work to which they relate was done?

A. I made the entries immediately on my return from the woods. The work was done right in the Allegheny mountains, in the northern part of the State of Pennsylvania.

Q. 12. After Henry F. Drawbaugh had told you about his brother Daniel's talking-machine did you ever communicate what he said about it to any one else?

[*Objected to as above.*]

A. Yes, sir.

Q. 13. When, where, and to whom?

A. I spoke of it when we were out on that Potter and Clinton line to the surveyors.

Q. 14. Who were the surveyors?

A. There was A. H. McHenry, from Jersey Shore, Lycoming county, Pa., his son William McHenry, of the same place, and Mr. Spafford—I don't know his first name—from Coudersport, Potter county, and myself, and a couple of axe-men, but I can't remember who they were.

Q. 15. After you first spoke of Daniel Drawbaugh's talking-machine, was the subject ever alluded to again among the members of that surveying party; if so, in what way?

[*Same objection.*]

A. It was spoken about at different times—of it being an invention that would take the place of telegraphing. At one time William McHenry and I were talking about that we ought to have one to send after our pack-men; they got lost some place, and didn't get to us with our grub.

Q. 16. Was the subject of the talking-machine, after you had told them about it, treated by the other members of the party as a serious matter, or as one which called only for jesting remark?

[*Objected to as above, and also because it asks merely for the witness's opinion, and because it is leading.*]

A. They all made light of it—didn't think it would amount to anything—except Mr. A. H. McHenry—the old man—and he thought it would.

Q. 17. Can you tell about how far the boundary line of Clinton and Potter counties is from Harrisburg?

A. I don't know the distance.

Q. 18. Were you acquainted with Mr. Spafford before you met him at the time of that survey?

A. I never knew or seen Mr. Spafford until I met him in the woods along Kettle creek at the time we went to work on that survey.

Q. 19. After finishing that survey, when next did you see him?

A. Never seen him after the line was finished, until yesterday.

Q. 20. After the line was finished, when next did you see Mr. A. H. McHenry?

A. I seen him right away. I was about Jersey Shore until near the holidays of that same year—1869.

Q. 21. After the holidays of 1869, when next did you see him?

A. Not until June, 1870. I took a little trip and went around that way—by Jersey Shore.

Q. 22 When next after June, 1870?

A. I didn't see him then until he was brought here on this scrape, day before yesterday.

[*Deposition objected to as not in rebuttal.*]

Cross-examination by Mr. Storrow, de bene esse:

Cross-Q. 23. Please state everything else that Henry F. Drawbaugh ever told you about the the inventions of his brother Daniel.

A. I can't explain anything more than what I did say.

Cross-Q. 24. You have stated that Henry talked to you about his brother Daniel's inventions in September, 1869; I suppose he has talked with you a good many other times about his brother's inventions, has he not?

A. No; he never talked very much to me about it.

Cross-Q. 25. My question was whether he didn't talk to you at other times than September, 1869, about his brother's inventions?

A. Not that I remember of until this suit, and then his conversation was that his brother and this company had a suit about it, and he thought Dan was going to gain it, or something to that effect.

Cross-Q. 26. Am I to understand you to mean that he told you about his brother's clock and faucet at the same time that he told you about his talking-machine?

A. Yes, sir.

Cross-Q. 27. What did he tell you about the clock at that time?

A. He didn't describe it to me, only that he had a new kind of a clock.

Cross-Q. 28. Did he tell you whether it kept good time or not?

A. I don't know whether he did or not.

Cross-Q. 29. Did he tell you what drove the clockwork?

A. If I remember right, it was an electric arrangement, to run with wires somehow to the earth, but how, I don't know.

Cross-Q. 30. Did Henry Drawbaugh tell you whether he had talked through his brother's talking-machine, and whether it talked well?

A. Yes; he said he talked through it, and you could hear it at the other end—hear everything he would say.

Cross-Q. 31. Do you mean that you could understand what was said, as well as hear the noise?

A. Henry Drawbaugh said you could—yes, sir.

Cross-Q. 32. Did Henry Drawbaugh tell you that he had just talked through it once, or that he had talked through it a number of times?

A. He didn't specify any number of times.

Cross-Q. 33. I mean to inquire whether he told you that he had spoken through it, or heard through it once only, or whether he gave you to understand that he had done it more than once?

[*Objected to in view of the preceding answer.*]

A. He said he used it; he didn't say whether he used it once, twice, or how often.

Cross-Q. 34. I wish you would now read over your 5th answer, and see whether that, in connection with what you have testified to on cross-examination, expresses your recollection of what Harry Drawbaugh told you about his brother Daniel's invention in September, 1869.

A. It does, as near as I can remember.

Cross-Q. 35. What has been your principal occupation since 1869?

A. I have had no particular occupation; I have been at civil engineering, I suppose, most of the time.

Cross-Q. 36. What part of the work of civil engineering?

A. I had the chain.

Cross-Q. 37. Where have you been living for the last five years?

A. My home has been in Newville all the time—my wife is there.

Cross-Q. 38. When was it that Henry Drawbaugh first mentioned to you that there was a suit going on?

[*Objected to as irrelevant and immaterial.*]

A. Some time during last summer.

Cross-Q. 39. Did Harry Drawbaugh describe to you what kind of a thing his brother's talking-machine was—how it was made?

[*Objected to because the witness's memory upon the subject of his conversation with Henry Drawbaugh has already been exhausted.*]

A. If he did, I can't remember how it was constructed.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 14th day of March, 1884.

FRED. M. OTT,
Examiner.

GEORGE S. BRICKER.

JASPER M. SPAFFORD, *being produced, sworn, and examined, saith:*

Examined by Mr. Jacobs:

My age is forty-nine; I reside near Coudersport, Potter county, Pa.; I am merchandising, and have been for the last ten years, or about that.

Q. 1. What was your occupation prior to going into the business of merchandising?

A. I was surveying.

Q. 2. I have in my hand a copy of the "Laws of the General Assembly of the State of Pennsylvania, passed at the session of 1869," and referring to page 685 of the same, I find an act approved April 3, 1869, and entitled "An act to re-run and revive the northern boundary of Clinton county between Clinton and Potter," in which act A. H. McHenry, of Lycoming county, and J. M. Spafford, of Potter county, State aforesaid, are by name appointed commissioners to carry out the provissions of the act; are you the J. M. Spafford referred to?

A. I am.

[*Counsel for repondents offers in evidence the act of Assembly referred to, of which the following is a copy*:

"No. 668.

AN ACT

To re-run and revive the northern boundary of Clinton county, between Clinton and Potter.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same*, That A. H. McHenry, of Lycoming county, J. N. Spafford, of Potter county, State aforesaid, are hereby appointed Commissioners, with power to choose assistants, to re-run and revive and establish the original county line on the northern boundary of Clinton county, the same being the division line between Clinton and Potter counties.

Commissioners appointed.

Line to be marked according to original draft of survey.

SECTION 2. That said A. H. McHenry and J. M. Spafford shall obtain from the records on file the original drafts of said survey and enter upon the grounds and carefully mark and establish said line according to the original draft thereof, and return a copy thereof to each of the Prothonotaries of the respective counties of Clinton and Potter.

Copies of survey

SECTION 3. Said Commissioners shall receive a compensation for said services which shall be paid jointly by

Compensation.

the Commissioners of Clinton and Potter counties, provided that the expense of said re-survey shall not exceed the sum of two hundred and fifty dollars. Proviso.

JOHN CLARKE,
Speaker of the House of Representatives.
WILMER WORTHINGTON,
Speaker of the Senate.

APPROVED—The 3d day of April, Anno Domino one thousand eight hundred and sixty-nine.

JNO. W. GEARY."

Q. 3. Did you and Mr. McHenry enter upon the duties imposed upon you by the provisions of the above act?

A. We did.

Q. 4. When?

A. In October of that same year.

Q. 5. At what point did you begin to run the line between the two counties?

A. At the north-west corner of Clinton county, in the Potter county line, and we ran from there east.

Q. 6. How long were you running that boundary line?

A. I think we were engaged in the work about ten or eleven days.

Q. 7. What assistants were chosen by you and Mr. McHenry to help you in the work?

A. For our chain carriers we had a young man by the name of Bricker and a young son of Mr. McHenry; our axe-men I have forgotten now except one man by the name of Dougherty; I think Bricker's first name was George.

Q. 8. Had you ever been acquainted with Mr. Bricker before you met him at the time of that survey?

A. I had not.

Q. 9. After the survey was completed when next did you see him?

A. I saw him here yesterday morning; that was the first time after the survey was completed.

Q. 10. Had you ever met Mr. A. H. McHenry before you started on that survey with him?

A. I had not.

Q. 11. When next did you see him after the survey was completed?

A. I saw him in this place yesterday.

Q. 12. Do you recollect of any conversation during the progress of that survey, about a talking-machine?

A. I do.

Q. 13. Will you please state what you remember of hearing on the subject, and from whom?

[*Objected to as hearsay and too remote.*]

A. During the survey, one night in camp Mr. Bricker was telling that some one had invented a talking-machine and that persons could talk with it a long distance, or some distance; after that it was alluded to by different ones in the party a few times; I don't know how many; perhaps two or three times; perhaps more.

Q. 14. Will you state, if you please, how it was alluded to, and what was said?

[*Same objections.*]

A. One time in particular that I remember, young McHenry spoke to Bricker and said to him: "If we had your talking-machine now we could talk back to Kettle Creek and see what they are doing there." That was the place where we had stayed over Sunday. Bricker replied that we would have to have wires attached to it to talk over—or something to that effect; then it was alluded to at other times in joking and jesting ways; the party doubted the truth of it.

Q. 15. Do you remember whether or not Mr. Bricker mentioned the name of the man who had invented the talking-machine?

[*Same objections.*]

A. I do not remember; if he mentioned it I have forgotten it.

Q. 16. Did you understand at the time where the man who had invented it lived?

[*Objected to as above, and as asking for guess-work or opinion, and as assuming that somebody had invented a talking-machine at that time.*]

A. I understood that it was some one that Bricker knew, and that he lived down the Susquehanna river somewhere; I understood that it was somewhere where Bricker had lived, but didn't know the place.

Q. 17. Did the conversation which you heard during that survey about the talking-machine ever occur to you afterwards?

[*Same objection.*]

A. The mere fact of the conversation occurred to me after I began

to read and hear about the telephone—the mere fact that it was mentioned occurred to me.

Q. 18. How soon after you first began to read and hear about the telephone did it occur to you?

A. As soon as I heard it; the first I heard of the telephone being an established fact was an account that I read that they had been hearing music from Boston over a distance of about twenty miles, and then it occurred to me that it was the same thing that had been talked about.

[*Objected to as not in rebuttal.*]

Cross-examined, de bene esse, by Mr. Storrow:

Cross-Q. 19. Did you understand from Mr. Bricker that he had talked through his friend's talking-machine, and knew that it would work?

[*Objected to as assuming.*]

A. I did not so understand him.

Cross-Q 20. Did you understand from him that he had seen it?

A. I did not.

Cross-Q. 21. Did you understand from him that he knew the man that was alleged to have made it?

A. I understood that he either knew him or knew about him.

Examination taken, reduced to writing, and by the witnesses sworn and subscribed to before me, this 14th day of March, 1884.

FRED. M. OTT,
Examiner.

J. M. SPAFFORD.

ALEXANDER H. McHENRY, *being produced, sworn, and examined, saith:*

Examined by Mr. Jacobs:

I reside at Jersey Shore, Lycoming county; age, seventy; occupation, surveyor and engineer.

Q. 1. Are you the same A. H. McHenry who is named in the act of April 3, 1869, as one of the commissioners to revive and rerun the northern boundary of Clinton county between Clinton and Potter?

A. I am.

Q. 2. Who assisted you in that work?

A. Jasper M. Spafford was the associate commissioner; our assistants were George S. Bricker and William F. McHenry; they were chain bearers; the axe-men were only temporary, but these were permanent.

Q. 3. At what time did you carry out the provision of that act by rerunning the boundary line referred to?

A. It was from the 18th day of October, 1869, about the eleven subsequent days, exclusive of the Sabbath—the 24th.

Q. 4. Had you any acquaintance with Mr. Spafford before you began that work?

A. I had no personal acquaintance with Jasper Spafford until I met him at Westport; that was the first introduction I had to him. Westport is, by railroad, one hundred and fifty-six miles from this place, at the mouth of Kettle creek, a station on the Philadelphia and Erie railroad. It is, by the traveled route, about twenty-one miles from Westport to the northwestern corner of Clinton county. I am not positive whether it was the 16th or 17th that I met him there; we proceeded immediately to the place where we began the survey.

Q. 5. After you completed the survey, when did you again meet Mr. Spafford?

A. We went from there to Youngwomanstown on the Susquehanna, and remained there until we made out the report; it is a station on the railroad, and its name has been changed to Northport. Mr. Spafford returned from there to Potter county, and I returned to Lycoming, and I never met him again until I met him day before yesterday at the Lochiel hotel, Harrisburg.

Q. 6. Had George S. Bricker been in your employ at any time before you began the Clinton and Potter boundary line survey, and if so, in what capacity, and when?

A. He had been in my employ considerably—had carried chain for me in quite a number of surveys—the most particular one was—he had been in the same capacity—him and my son William F. McHenry—in running and establishing the line of Union, Centre, Clinton, and Lycoming counties.

Q. 7. When was that work done?

A. It was in July and August, 1869—the latter part I know was in August.

Q. 8. Before you met George S. Bricker in this city a few days ago, when did you last see him?

A. I think I merely saw him once since that time, when he was on a visit to his brother's. I think it was within two years after that time. I think there was no other time that I saw him.

Q. 9. Do you recollect of hearing, whilst you were engaged upon the Potter and Clinton boundary line survey, any conversation with regard to a talking-machine?

[*Objected to as hearsay and too remote.*]

A. I heard George Bricker and my son William for the first time on Monday, the 25th of October; they were talking; William seemed to treat it as a joke; I paid but little attention to it; they were behind me. when we went into camp at the middle branch, Youngwoman's creek—perhaps that night—it was the night of the 26th or 27th—they were talking about the talking-machine there; I asked George Bricker how it was brought into action—to convey sounds or language, I think was the—as near as I can recollect, that was the idea; George remarked that it was by the attachment of wire. My impresson is, but I don't recollect whether it was there or further on the next night, that he mentioned the name of the inventor which I now think was Drawbaugh, but I soon forgot the identical name, and don't think that I ever was able to recall it until I met Mr. Henry F. Drawbaugh; for, from that time and after that time, I associated it with a stream that puts into the Sinnemahoning a short distance west of our work—within a mile—called the Laushbaugh branch; it had the 'baugh' to it and it was very easy to associate the two together; he remarked, at that time or the next day or night, that the inventor lived in Cumberland county.

Q. 10. Are those the only conversations on the subject of the talking-machine that you remember to have heard during the survey?

[*Same objection.*]

A. On the night, perhaps, of the 27th of October, we went to a camp after dark, about a mile and a half from the line, where Andrew J. Quigle, who was interested in the running of the line, was to bring us some provisions; when we got there we found none, and our provisions had run out at midday that same day. The boys, George Bricker and my son William, were not in a very pleasant humor with Mr. Quigle; they were standing out in front of the camp, and William remarked to George Bricker, "If we had your talking-machine and could connect with Quigle,

wouldn't we give it to him?" That was the language he used; that is the last of any thing that I recollect identically about the talking-machine on that route. There is something that I did not recollect of and spoke of this afternoon; we are passed the place, though, where it occurred; myself or Jasper Spofford asked him the question, how far you could communicate sound or talk—or something of that kind—that was the idea—and he said "all around," implying that it was limitless; that was the impression that it made on my mind; he didn't use those words.

[*Objected to as not in rebuttal and immaterial.*]

Cross-examined, de bene esse, by Mr. Storrow:

Cross-Q. 11. This blank book, which you have just handed me and which you held in your hand while testifying, is it all in your handwriting?

A. Whatever is in there is; it is on various subjects.

Cross-Q. 12. When did you write it?

A. Since I have been here.

Cross-Q. 13. You have just handed me a paper which you held in your hand while testifying; in whose handwriting is it, and when was it written?

A. It is my own, and was written about a week ago.

[*Complainants' counsel requests the examiner to make and put upon the record a copy of the book and of the paper.*

The book is as follows:

"1869 on Wednesday 18 October com-d. Retracing and running the County line of Clinton and Potter. Connected with W line of No 4941, then along the line
18 Wednesday
19 Thursday
20 Friday crossed first fork of Kettle Creek.
21 Saturday to a point near and West of Kettle Creek
22 Sunday stayed at Jas. Kurrighaus at Merrimans farm; rained this day; 23 Monday; got David Dougherty for packman; also had an axe man at night and camped at small br Youngwomans Creek. 24 Tuesday encamped at mid br Young womans Cr. Old marks ceased—here Geo. Bricker and son William talked about the talking-machine in camp—said something about it required or had a wire—Geo. Bricker spoke of name and I associated the name with Laushbaugh branch of Sinnamahoning 25 Wednesday ran on; got to a new road, then down to house on 5527—no provisions—next went up to camp and got breakfast and some provisions.

26 Ran on to W br of main br of Youngwomans Cr—went to Baileys; it seems Sunday was the 24th Oct 1869 by the almanac of that year, according to the calendar it was on the evening of Tuesday 26th October 1869, we encamped at the middle branch of Youngwomans creek; the old marks on the county line ceased at this point. My son William F and George S. Bricker were discussing the question about the talking-machine, Willie asked or George was telling him how it was or was to be used; I for the first time asked him—Geo—how it was to be used—I understood him to say it was to be used in communicating by wire attachment. On the night of 27th we reached what is called 12 m camp. H. A. Quigle had promised to have a supply of provisions there but failed to do so—found it cold and dreary.

Dougherty then broke Quigle's lamp called night hawk,

The talking machine was there talked by the boys to communicate with Quigle—

James Spafford,

Condersport,

18th to 29th see Geo. S. Bricker's notes,

comd at W. P. n w cor of Clinton county,—on the 18th of Oct 1869 for—

Supplement act county line Lycoming,

Pampht laws 575, 1869

685 Pamphlet laws 1869 "]

[*At the other end of the book is the following:*

"Surveyor General office.

33, 105, Henry E. Thomas 31 May 1883, , pat 16 July 1883

200 miles B. Weid trustee

78 " " " "

70 " " " "

date 16 Oct 1883 no survey retd.

80 Cyrus Rauck

15 Nov 1882 no sur—

200 Jacob S Maxwell

28 March 1882

5 Linsy Mehaffey.

15 Oct 1882

49 Wm B Clark.

1 Sept 1882 Ret 50—111"

The contents of the paper are as follows:

"Co. Line and Clinton and Potter Oct 1869

Mon Wednesday 18 Oct 1869

Tue Thursday 19

Wed Friday 20—at crossing 1st Fork kettle cr

Thurs Sat 21

Fri Sunday 22, Stayed at Merriman's place,

Sat Monday 23, night camp at Br Y W Creek

Tuesday 24—encamped br Y W Cr

Wednesday 25 Cross, mid br Y C R quit at bearg

Thurs 26—br Y W Cr bearg

Said to be 24th Sunday."

Re-direct by Mr. Jacobs:

Q. Q. 14. For what purpose were those various notes made in that book?

A. They were merely memoranda of what occurred to me. Some of them were made to refresh my recollection.

Q. Q. 15. Of your own notion or at the suggestion of any one?

A. Nobody but myself.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me this 14th day of March, 1884.

FRED. M. OTT,
Examiner.

A. H. McHENRY.

Adjourned until March 15, 1884, at 10, A. M.

March 15, 1884, 10.45, A. M.

Examination resumed; present, same counsel.

GEORGE D. MILLER, *being produced, sworn, and examined, saith:*

Examined by Mr. Jacobs:

My age is thirty-five; I reside in Fairview township, York county, near Lewisburg; I truck a small place of about five acres.

Q. 1 Did you ever hear of Daniel Drawbaugh's talking-machine?

A. Yes, sir; I did.

Q. 2. When did you first hear about it, and from whom?

[*Objected to as hearsay.*]

A. Between—about 1868; I heard it from Michael S. Drorbaugh.

Q. 3. What did he tell you about it?

[*Objected to as above and as too remote.*]

A. He told me that he talked through it.

Q. 4. Where did he say he talked through it?

[*Same objection.*]

A. In Daniel Drawbaugh's shop.

Q. 5. Where were you living and where was Michael S. Drorbaugh living at the time this conversation took place between you?

[*Same objection.*]

A. In Fairview township, York county, Pa.

Q. 6. Is Michael S. Drorbaugh now living or dead?

[*Same objection.*]

A. He is dead.

Q. 7. When did he die?

[*Same objection.*]

A. He died in 1871, on the 16th of March.

Q. 8. How are you able to fix the date of his death so accurately?

[*Same objection.*]

A. I saw it on his tombstone.

Q. 9. When did you see it?

[*Same objection.*]

A. On the 14th day of March, 1884.

Q. 10. Where is he buried?

[*Same objection.*]

A. At Mount Zion Church in Fairview township.

Q. 11. What leads you to fix the date of this conversation as about 1868?

[*Same objection.*]

A. I left home two years before Michael died, and hadn't been about him until shortly before his death.

Q. 12. At the time of the conversation, how far apart did you and he live?

[*Same objection.*]

A. Not over a quarter of a mile or thereabouts.

Q. 13. About the time the conversation took place, were you accustomed to meet him frequently or only occasionally?

[*Same objection.*]

A. I met him frequently.

[*Deposition objected to as not in rebuttal, and as a mere frivolous waste of time.*]

Cross-examined by Mr. Storrow, de bene esse:

Cross-Q. 14. Where did you live in 1868?

A. At home with my father in Fairview township, York county, Pennsylvania; my father's name was Samuel Millard.

Cross-Q. 15. Where have you lived since 1868?

A. I have been part of the time since 1868 in Ohio and Indiana, Dauphin county, Pennsylvania, and in Fairview township, York county, since I left Dauphin county.

Cross-Q. 16. Do you know James Schaffer?

[*Objected to as immaterial, and as irrelevant to the testimony-in-chief of the witness.*]

A. I know a James Schaffer; yes.

Cross-Q. 17. I mean a man who now lives in Fairview township, is about thirty-one years old, and calls himself a laborer.

[*Same objection.*]

A. Yes, sir.

Cross-Q. 18. He had a brother Samuel Schaffer, had he not?

[*Same objection.*]

A. Yes, sir.

Cross-Q. 19. That brother married Ellen, daughter of Andy Shell?

[*Same objection.*]

A. Yes, sir.

Cross-Q. 20. Is Samuel Schaffer living?

[*Same objection.*]

A. No, sir.

Cross-Q. 21. What kind of dealings have you had from time to time with James Schaffer?

[*Same objection, and counsel for respondents protests against this most outrageous violation of the rules of evidence.*]

A. Not any.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 15th day of March, 1884.

FRED. M. OTT,
Examiner.

GEORGE D. MILLARD.

Adjourned until March 17, 1884, at 10, A. M.

March 17, 1884.

Examination resumed at 10, A. M.

Present, Mr. Howson for complainants, and Mr. Jacobs for respondents.

ADAM DRORBAUGH, *being produced, sworn, and examined, saith:*

Examined by Mr. Jacobs:

My age is fifty-one; I reside in Fairview township, York county, Pa.; I am a farmer.

Q. 1. Are you related to Daniel Drawbaugh, of Eberly's Mills?

A. Yes, sir; I think I am—about the second cousin.

Q. 2. How far from Eberly's Mills do you live?

A. We call it eight miles from where I live to Harrisburg; that is about as near as I can come at it.

Q. 3. Did you ever hear of Daniel Drawbaugh's talking-machine?

[*Objected to as not rebuttal and as calling for hearsay.*]

A. Yes, sir.

Q. 4. From whom did you first hear of it and when?

[*Objection continued.*]

A. From Michael S. Drorbaugh, sometime about 1868; I couldn't tell exactly—between 1867 and 1869, sometime.

Q. 5. Is Michael S. Drorbaugh living or dead?

[*Objection continued.*]

A. He is dead.

Q. 6. When did he die?

[*Objection continued.*]

A. In the year 1871—the 16th of March.

Q. 7. Is Michael S. Drorbaugh the only person you ever heard speak of Daniel Drawbaugh's talking-machine?

[*Same objection.*]

A. He is the first person—he is about the only person.

Q. 8. How far apart did you and Michael S. Drorbaugh live at the time he spoke to you upon this subject?

[*Same objection.*]

A. A quarter of a mile.

Q. 9. Were you then living at the same place you live now?

[*Same objection.*]

A. Yes, sir.

Cross-examined, de bene esse, by Mr. Howson:

Cross-Q. 10. When did you first hear that this suit was going on?

A. I don't know how to answer that—about last September.

Cross-Q. 11. How did you hear it then—from whom?

A. From Daniel Drawbaugh.

Cross-Q. 12. Where was that, and how did you and Daniel Drawbaugh happen to meet at the time?

A. He came driving past my residence, and we met in the road.

Cross-Q. 13. When were you told that your testimony would be wanted in this case, and by whom?

A. When I came here to Mr. Jacobs' office on the 14th of March, 1884—last Friday.

Cross-Q. 14. With whom did you travel from your home to Mr. Jacobs' office, if with any one?

A. With my son.

Cross-Q. 15. After you met Mr. Daniel Drawbaugh last September, did anybody else see you and tell you anything about this suit; if yes, who, and when?

A. Not that I recollect.

Re-direct by Mr. Jacobs:

Q. Q. 16. Were you or not subpœnaed to come to Harrisburg on last Friday?

A. Yes, sir.

Re-cross by Mr. Howson:

Re-cross-Q. 17. Who subpœnaed you?

A. Shank; I don't know what his first name is—I mean constable A. B. Shank.

Re-cross Q. 18. Have you been in Harrisburg here continuously since last Friday?

A. No, sir.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 17th day of March, 1884.

ADAM DRORBAUGH.

FRED. M. OTT,
Examiner.

WILLIAM NORTH, *being produced, sworn, and examined, saith:*

Examined by Mr. Jacobs:

My age is sixty-two; I reside at Newville, Cumberland county, Pa.; I am a blacksmith.

Q. 1. Have you long been engaged in that business at Newville?

A. I have been engaged in blacksmithing since about 1848; I haven't been there all the time, but that has been the home of my family since 1848.

Q. 2. Are you acquainted with Henry F. Drawbaugh; if so, how long have you known him?

A. I have known him slightly for thirty years, I guess; but for twenty years I have been more closely acquainted with him.

Q. 3. Will you look at the paper which I now hand you and tell me in whose handwriting it is, and by whom it was signed?

[*Counsel for respondents hands paper to the witness.*]

A. That is my handwriting, and signed by me; it is my letter to Drawbaugh on business.

[*Counsel for respondents offers in evidence a copy of said paper, the original to be produced when called for.*

Objected to as immaterial and irrelevant.

The paper is copied by the examiner as follows:

"NEWVILLE, *July* 25, 70.

MR. H. F. DRAWBAUGH, *Dear Sir*, I was to see Mc. Iver on Saturday he said he was not doing anything to your job yet—said that the lumber you sent him did not suit for the crooked axles dont believe he cares to do it I will get the old boxes out without breaking the wheels. I also understand at one time the bed was to be cut off, let me know about it, also if Mc. Iver does not get the work tell me what to do—the new wagon that you speak of we will take $115 dollars with bed and side boards—the spring seat you spoke of I did not understand you mean eliptic springs if so we could not put them in at the price Please let me hear from you soon—also about the length that you would like the bed we will sell you the wagon at 90 dollars as it is.

Yours in haste

WM NORTH"]

Q. 4. Did Henry F. Drawbaugh ever tell you anything about any of the inventions of his brother, Daniel Drawbaugh, of Eberly's Mills, Cumberland county, Pennsylvania?

[*Objected to as not rebuttal, and as inquiring for hearsay; this objection to apply to all questions upon this line of inquiry.*]

A. He did.

Q. 5. When did he first speak to you of them, and what did he say about them?

A. I can't fix the date when he first spoke about those inventions, but it was prior to the date of that letter. He was there in the shop with reference to the ironing of a wagon, when the conversation took place with reference to the electric clock and electric talking-machine, as he called it.

Q. 6. Whose electric talking-machine was spoken about on that occasion?

A. His brother Dan's, as he called him.

Q. 7. Was any one present at the conversation beside yourself and Henry F. Drawbaugh?

A. Yes; my son, S. A. North, was in the shop at the time.

[*Deposition objected to as not rebuttal, and as hearsay and mere waste of time.*]

Cross-examined, de bene esse, by Mr. Howson:

Cross-Q. 8. When were you notified to come here to testify, and by whom?

A. I was summoned on Saturday by Henry F. Drawbaugh.

Cross-Q. 9. Had Henry F. Drawbaugh said anything to you on the subject before Saturday last; if so, when?

A. Yes; that I can't tell you—when he had; but he had told me that he thought I would be called upon to make a statement with regard to it; it was either June or July of last year; I can't tell which month, though.

Cross-Q. 10. How long before that had you known that this suit was going on, and how had you learned it?

[*Objected to as immaterial and irrelevant.*]

A. I guess the first that I noticed I saw through the press, but I don't know when that was, for I didn't think it interested me very much and didn't pay much attention to it.

Cross-Q. 11. Had you heard any talk about it before June or July last?

[*Same objection.*]

A. Oh! yes.

Cross-Q. 12. Had Mr. Henry F. Drawbaugh spoken to you on the subject before June or July last?

A. He had.

Cross-Q. 13. More than once?

A. I couldn't say positively whether he had.

Cross-Q. 14. Have you done any work for Mr. Henry F. Drawbaugh during the last two or three years, or had any business transactions with him of any kind during that period?

A. No, not any; that is, not any directly for him himself.

Cross-Q. 15. What indirect business transactions have you had with him?

A. He had been superintending for the Ahl Bros. at their ore-mines, saw-mills, and so forth, and getting a good deal of work—ordering a good deal of work.

Cross-Q. 16. For how long a time have you had business transactions of this kind with Mr. Henry F. Drawbaugh?

[*This and the preceding question objected to as immaterial and irrelevant.*]

A. That was about three years prior to April last; may be longer; I don't exactly know.

Cross-Q. 17. And these business matters have brought Mr. Drawbaugh to your shop every now and then during these three or four years last past?

[*Same objection.*]

A. Yes, sir.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 17th day of March, 1884.

FRED. M. OTT,
Examiner.

WILLIAM NORTH.

Recess until 2, P. M.

SAMUEL A. NORTH, *being produced, sworn, and examined, saith:*

Examined by Mr. Jacobs:

My age is thirty-two; I reside at Newville, Cumberland county, Pa.; I am a blacksmith.

Q. 1. Are you related to William North, the witness who was last examined in this case?

A. Yes, sir; his son.

Q. 2. Are you acquainted with Henry F. Drawbaugh, of Newville, Cumberland county, Penna.?

A. Yes, sir.

Q. 3. How long have you known him?

A. I have known him for twenty years.

Q. 4. Have you, or not, been working for your father, William North, for some time past; if so, how long?

A. It is a good many years; I don't just know how long; I learnt my trade with him, and haven't worked much anywhere else since; I think I went into that shop to learn my trade some time in 1869.

Q. 5. Did you ever hear Henry F. Drawbaugh say anything about any inventions of his brother, Daniel Drawbugh?

[*Objected to as not rebuttal, and as calling for hearsay.*]

A. Yes, sir.

Q. 6. What inventions of his brother, Daniel Drawbaugh, did you hear him speak of?

[*Same objection, and also objected to as a leading and improper mode of inquiry.*]

A. A clock and a talking-machine.

Q. 7. When did you hear him speak of those inventions?

A. Along about 1869.

Q. 8. Was any one else present when he spoke of them?

A. Yes, sir; my father.

Q. 9. Where did the conversation take place?

A. In our shop—I mean my father's shop at Newville.

Q. 10. What brought Henry F. Drawbaugh to your father's shop at the time that this conversation took place?

A. To have work done.

Q. 11. What work?

A. A wagon ironed.

Q. 12. Do you know anything of a transaction between your father and Henry F. Drawbaugh in which a Mr. McIver was to furnish lumber?

A. Yes, sir.

Q. 13. Was the conversation which you have referred to, and which you say took place at your father's shop when Henry Drawbaugh was there with reference to the ironing of a wagon, before or after the transaction in which Mr. McIver was to furnish the lumber?

[*Objected to as incompetent, and asking for guess-work.*]

A. Before.

Q. 14. What did Henry F. Drawbaugh tell you on that occasion about his brother Daniel's talking-machine?

[*Objected to as asking for hearsay.*]

A. He just got to talking about an electric clock, and about a talking-machine that would work by electricity.

Q. 15. Did he or not say what that talking-machine was intended to do?

[*Objected to for the same reasons, and because the witness has already given what he alleges to be his recollection of what was said.*]

A. Yes, sir; take the place of telegraphing and be cheaper; that's what he said.

Q. 16. Are you acquainted with Daniel Drawbaugh?

A. No, sir.

Q. 17. Have you ever been in his shop at Eberly's Mills?

A. No, sir.

[*Deposition objected to as not rebuttal and as immaterial and hearsay.*]

Cross-examination, de bene esse, by Mr. Howson:

Cross-Q. 18. What did Henry F. Drawbaugh tell you about the clock?

A. He just said that his brother had a great electric clock; that was about all.

Cross-Q. 19. Is that all you recollect of him saying about the clock?

A. That is about all.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 17th day of March, 1884.

FRED. M. OTT,
Examiner.

SAMUEL A. NORTH.

SAMUEL WOODS, *being produced, sworn, and examined, saith:*

Examined by Mr. Jacobs:

My age is fifty-three; I reside in Newville, Cumberland county, Penna.; at the present time I am employed by the creameries of the valley selling their cheese, and also by Dock & Bonbright, of Harrisburg, selling meat for them in connection with my business of selling cheese.

Q. 1. How long have you resided in Newville?

A. Three years this spring.

Q. 2. Did you ever reside in Frankfort township, Cumberland county; if so, from what time to what time?

A. I was raised in Frankfort township, and had my home with my father; I resided in the township until 1872.

Q. 3. Did you ever occupy any official position in that township?

A. I was elected justice of the peace; I was elected in the spring of 1867 and served until 1872.

Q. 4. Are you acquainted with Daniel Drawbaugh, of Eberly's Mills, Cumberland county, Pa.?

A. I met him at Bloserville; in the fall of 1869, I think, I first saw him.

Q. 5. Will you state what official position, if any, you were then occupying, and how you came to meet him?

A. He and one of the other neighbors came into the store-room; and I think they wanted a power of attorney, if I ain't wrong, to go to Illinois with; I think that was their business; I was then justice of the peace.

Q. 6. Am I to understand that you were keeping store at the same time that you were justice of the peace?

A. Yes, sir.

Q. 7. Did you ever hear of any of Daniel Drawbaugh's inventions?

A. Yes, sir.

Q. 8. What invention of his did you ever hear of, and when?

[*Objected to as not rebuttal, and as inquiring for hearsay.*]

A. Of a stave jointer, or cutter—I think it was called—of a molasses faucet that I owned and used—said to be his—and a machine called a talking-machine, or Drawbaugh's crazy talking-machine, as it was very often spoken of there.

Q. 9. Whom did you ever hear speak of Drawbaugh's crazy talking-machine?

[*Objections continued.*]

A. His own people used to speak of it there occasionally—his own relations.

Q. 10. Will you state whether or not the Drawbaugh family had sprung from the vicinity of Bloserville, Frankfort township, Cumberland county?

A. I believe they did.

Q. 11. Were there or not whilst you lived there, many relations of Daniel Drawbaugh living about Bloserville?

A. Yes, sir; quite a number.

Q. 12. What did you ever hear said about Drawbaugh's crazy talking-machine among his own people, as you have testified?

[*Objected to as not rebuttal, as inquiring for hearsay, and also as entirely too vague, indefinite, and remote.*]

A. It was to be an electric machine used in place of telegraphing. That was the sense that I had from their talk—that he could use it in place of telegraphing—to talk to a distance.

Q. 13. Whilst you were justice of the peace in Frankfort township, did you, or did you not, ever have any visit from Daniel Drawbaugh?

[*Objected to as leading.*]

A. He came into the store with another gentleman, and I think it was David Darr; I think that was the man that was with him.

Q. Did you, or did you not, at that time, have any conversation with Daniel Drawbaugh with reference to any inventions he had made?

[*Objected to as not rebuttal and as leading.*]

A. We had commenced a conversation.

Q. 15. Will you state that conversation?

A. I think I said, in the first place, "I am using one of your faucets." Then he spoke of his electric machine, or what we thought was the talking-machine; I am not able to give you everything that was said at the time—that is, verbatim, for I did not pay much attention just at that time; but he continued talking a minute or two, and the only thing that struck my mind or memory or attention at the time was when he said he could carry sound from there to where he lived—could carry sound, or in the sense we had it, could talk.

[*Answer objected to by Mr. Howson as not evidence.*]

Q. 16. Did he or not say from where to where he could talk?

[*Objected to as leading, and improper mode of inquiry, also as incompetent.*]

A. From where we were to his home, I understood him; that was the sense I took out of his talk.

Q. 17. Had you, or had you not, before meeting Mr. Daniel Drawbaugh himself, heard any comments with regard to his talking-machine among his relatives?

[*Objected to as not rebuttal, and as leading, and asking for hearsay.*]

A. Yes, sir; I did.

Q. 18. What were they?

[*Objection continued.*]

A. Well, they varied; some thought he would invent something, and others thought he was a little off in his mind.

Q. 19. When did your first wife die?

A. February 11, 1872.

Q. 20. How long after she died did you move out of Frankfort township?

A. About the first of April of the same year.

Q. 21. Have you ever lived or kept store in that township since?

A. I never kept store there since; I have lived there since on my father's farm.

Q. 22. When?

A. In 1878, 1879, and 1881—I think I am right—yes, I am right.

Q. 23. Did you ever meet Mr. Daniel Drawbaugh in Frankfort township after you quit keeping store in 1872?

A. I never recollect of meeting him or talking with him after I quit in 1872. I never met him in the township—not that I recollect of—nowhere.

[*Objection to deposition renewed on the grounds stated.*]

Cross-examined, de bene esse, by Mr. Howson:

Cross-Q. 24. Where were you living from April, 1870, until 1878?

A. I moved to Grayson, Cumberland county, about seven miles from Bloserville.

Cross-Q. 25. What business were you engaged in there?

A. I wasn't occupied with much of anything at that time.

Cross-Q. 26. Have you seen Mr. Daniel Drawbaugh at any time within the last two years?

A. I don't recollect; I may have at Carlisle, but I didn't speak to him; I may have seen him about the court-house there, but didn't speak to him.

Cross-Q. 27. How long have you known this suit was going on?

[*Objected to as immaterial and irrelevant.*]

A. I can't recollect, but I think Mrs. Woods read a passage out of the paper—that there was litigation with the Bell Company and, I think, the People's. I think it was about a patent; I can't recollect how long ago it was; it might have been a couple of years.

Cross-Q. 28. Who asked or notified you to come here and testify in this suit?

[*Same objection.*]

A. Harry Drawbaugh.

Cross-Q. 29. How long have you known Harry Drawbaugh?

[*Same objection.*]

A. I have known of him many years, I suppose—I have known of him many years—not personally, though.

Cross-Q. 30. What I want to know is, how long you have known him personally?

[*Same objection.*]

A. In this sense I knew him—in a business sense—I knew him about five years ago; I bought a tight barrel from him for cider.

Cross-Q. 31. Have you had any business dealings with him at all since that?

[*Same objection.*]

A. Not that I can recollect of.

Cross-Q. 32. When was it he first notified you that your testimony was, or might be, wanted in this case?

[*Same objection.*]

A. He, in the first place, called at my house in Newville and told my wife his business, and said they would call again, or said he would call again—I think there was two of them; I don't recollect, but I think Mrs. Woods said there was two; I could not fix any exact time.

[*Answer objected to by Mr. Jacobs as hearsay.*]

Cross-Q. 33. Did he call again; and if yes, when?

[*Objected to as immaterial and irrelevant.*]

A. He was there since that; I can't exactly fix the time; I wasn't at home and paid very little attention to it.

Cross-Q. 34. Well, when was it that he did find you, and notify you that your testimony was, or might be, wanted in this suit?

[*Same objection.*]

A. Well, he was at my house the day he subpœnaed Captain Graham; as usual, I wasn't at home; he left word there that I should come to Harrisburg on last Monday morning; I thought there was no summons served on me and I wouldn't go then; I was otherwise employed; I came down here on last Thursday morning on business; he met me out here on Market street, and he said, "I was hunting you," and he told me that he would hold me as a witness.

Cross-Q. 35. How did you know that Captain Graham was summoned here, and was summoned on the very day that Harry Drawbaugh called for you?

[*Same objection.*]

A. We lived very close neighbors—Captain Graham and I.

Re-direct by Mr. Jacobs:

Q. Q. 36. I intended to ask you on direct examination, but through inadvertance omitted to do so, two questions—first, how far is it from Bloserville to Newville, and second, how far is it from Bloserville to Eberly's Mills?

A. It is about six miles from Bloserville to Newville; I do not know exactly, but I always thought it was about twenty miles from Bloserville to Eberly's Mills.

Q. Q. 37. How far is it from Bloserville to Harrisburg?

A. It would be about thirty miles.

Q. Q. 38. If it should prove that Eberly's Mills is only three miles from Harrisburg, then your estimate of twenty miles between Bloserville and Eberly's Mills would be too small, would it not?

A. Yes, sir.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me this, 17th day of March, 1884.

FRED. M. OTT,
Examiner.

SAMUEL WOODS.

Adjourned until March 18, 1884, at 10, A. M.

March 18, 1884, 12, M.

Examination resumed.

Present, Mr. Howson for complainants, and Mr. Hill for respondents.

JOHN H. YOUNG, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

I am forty-eight years old; I reside now in Waynesboro', Franklin county, Pennsylvania; I am a minister of the Gospel.

Q. 1. Please state how you were employed in the year 1875.

A. I was employed in the year 1875 as college agent for Lebanon Valley College.

Q. 2. When did that employment begin, and when did it end?

A. It commenced on the first day of March, 1875, and ended February 18, 1876.

Q. 3. What was the nature of your duties as college agent that year?

A. My business was to secure students and money for the college.

Q. 4. What steps did you take to accomplish that object?

A. I visited the people at their homes, preached in the pulpits, and delivered addresses—talking up college interests.

Q. 5. What part of the State did you do that work in?

A. Cumberland, Franklin, Adams, and York counties.

Q. 6. In the prosecution of that business did you have occasion to visit the people in the eastern end of Cumberland county?

A. I did.

Q. 7. Did your business bring you, at any time, at or near Milltown or Eberly's Mills and the region lying round about that village?

A. Yes, sir.

Q. 8. Do you know Daniel Drawbaugh of Eberly's Mills; if so, how long have you known him?

A. I do; I have known him thirty-four or five years.

Q. 9. Were you ever in his shop at Eberly's Mills?

A. No, sir.

Q. 10. When you were laboring in Cumberland county in 1875, as college agent, did you hear anything said around among the people there about any inventions of Mr Drawbaugh's, or not?

[*Objected to as not rebuttal, as asking for hearsay, and as leading.*]

A. I did.

Q. 11. What inventions of his did you hear spoken of at that time?

[*Objections continued.*]

A. I remember distinctly of hearing of an electric clock and an electric talking-machine which he had invented.

Q. 12. From your own observation at that time, I would inquire whether Drawbaugh's electric talking-machine was or was not, in the year 1875, a matter of very general comment and conversation at and around Milltown?

[*Objected to as not rebuttal, as leading and hearsay, and asking for conclusions, not evidence.*]

A. It was.

[*Objection to deposition renewed on the grounds stated.*]

Cross-examined, de bene esse, by Mr. Howson:

Cross-Q. 13. How long have you been living in Waynesboro', and where were you living before you moved there?

A. I have been living in Waynesboro' since April, 1882; previous to that I lived in Duncannon, Perry county, two years.

Cross-Q. 14. And where were you living previous to your stay in Duncannon?

A. One year previous I lived in Newville, Cumberland county.

Cross-Q. 15. And where before that?

[*This line of examination objected to as immaterial and irrelevant.*]

A. For three years previous, in New Cumberland, Cumberland county.

Cross-Q. 16. Then, if I understand your testimony, in the year 1879 you were living at Newville, Cumberland county, and in the year 1876, 1877, and 1878 were residing in New Cumberland, Cumberland county?

A. Yes, sir; and was presiding elder of the district.

Cross-Q. 17. You say you have been acquainted with Mr. Daniel Drawbaugh for thirty-four or thirty-five years; I gather from that that as boys you and he resided in the same neighborhood?

A. Yes, sir; we went to school together.

Cross-Q. 18. Where was that—at what place?

A. At Gorgas's school-house, near Eberly's Mills.

Cross-Q. 19. You seem as a boy to have been a resident of the vicinity of Eberly's Mills; down to how late a time did you continue to live in that neighborhood?

A. I can hardly tell that—hardly give you the year; my father, when I was a boy, was living at Uhrich's mill—near Eberly's Mills—but

only lived there two years; as near as I can get to it, it was about the year 1845 or 1846; Uhrich's mill was a mill a short distance below Milltown, on the Yellowbreeches, and, I think, is now called Etter & Shanklin's mill.

Cross-Q. 20. Did you live in New Cumberland at any time before the year 1876, and if yes, when, and during what period of time?

A. I had lived there for a long time and then moved away for twelve years; at the close of which period I moved back in 1876.

Cross-Q. 21. Where were you living during the twelve years mentioned in your last answer?

A. At Franklintown, York county, and near Dallastown, York county; at Littleton, Adams county; at Newville, Cumberland county, and York, York county. I was in the ministry during that period, and was stationed at the above mentioned places.

Cross-Q. 22. It appears, then, that you have lived twice at Newville, Cumberland county; in what year or years did you first reside there?

A. In the years 1870, 1871, and 1872.

Examination taken, reduced to writing, and by the witness affirmed and subscribed to before me, this 18th day of March, 1884.

FRED. M. OTT,
Examiner.

JOHN H. YOUNG.

Recess until 2, P. M.

JOHN A. SMITH, *being produced, affirmed, and examined, saith:*

Examined by Mr. Hill:

My age is forty-seven; I reside at Bridgeport, Cumberland county, Pa.; I am a hotel-keeper at present.

Q. 1. How long have you lived at Bridgeport, and when did you move there?

A. In 1876, in the spring; it will be eight years the first of this coming April. I have lived there ever since and have kept hotel there all that time.

Q. 2. Where did you live last before you moved to Bridgeport?

A. At Camp Hill.

Q. 3. When did you move to Camp Hill, and how long did you live there?

A. I moved there in the spring of 1872, and lived there until I moved to Bridgeport in the spring of 1876; that is, four years.

Q. 4. What business did you carry on while you lived at Camp Hill?

A. Butchering.

Q. 5. When did you begin butchering at Camp Hill?

A. About December the 1st, 1871, I think.

Q. 6. Then you butchered there about four months before you lived there, did you?

A. Yes, sir.

Q. 7. Where did you live last before you moved to Camp Hill?

A. I lived on George Oyster's farm near Oyster's Point, Cumberland county.

Q. 8. Do you know Daniel Drawbaugh of Eberly's Mills; if so, how long have you known him?

A. Yes, sir; about twenty years.

Q. 9. Did you know Abraham May, a carpenter who formerly resided at Camp Hill?

A. Yes, sir.

Q. 10. Did you and Mr. May have any occasion at any time to go to Milltown together?

A. Yes, sir.

Q. 11. Where were you living, and where was Mr. May living, at the time you and he had occasion to go to Milltown together?

A. Both living at the village of Camp Hill.

Q. 12. When you got down to Milltown, where did you go, and where did Mr. May go?

A. I went into Eberly's grist-mill; I don't know where Mr. May went.

Q. 13. Did he leave you at Eberly's grist-mill and go somewhere?

A. Yes, sir.

Q. 14. Did he return to you while you were at the grist-mill?

A. Yes, sir.

Q. 15. State what, if anything, he said about where he had been when he returned to you.

[*Objected to as incompetent, irrelevant, and immaterial.*]

A. He said he had been down to see Mr. Drawbaugh's talking-machine.

[*Answer objected to by Mr. Howson as not evidence.*]

Q. 16. Had you ever heard him say anything about Mr. Drawbaugh's talking-machine before that; if so, about what time, and what was Mr. May doing at the time?

[*Objected to as leading, and inquiring for hearsay.*]

A. I don't remember—I heard him speak of it, but don't remember whether it was before or after that.

Q. 17. Did you ever know a man by the name of Jacob H. Kilmore, who used to work for Mr. May?

A. Yes, sir.

Q. 18. Did you ever hear him say anything about Daniel Drawbaugh's talking-machine?

[*Objected to as leading and asking for hearsay.*]

A. Yes, sir.

Q. 19. Can you tell us about when that was?

[*Objections continued.*]

A. About 1872 or the beginning of 1873.

Q. 20. While you lived at Camp Hill from the spring of 1872 to the spring of 1876, did you, or did you not, hear a good deal of talk in the community there, and around there, about Daniel Drawbaugh's talking-machine?

[*Objected to as leading and incompetent.*]

A. I heard it frequently about Mr. May's carpenter-shop.

Q. 21. Since you have been living at Bridgeport from the spring of 1876, and especially from the spring of 1876 to the spring of 1880, was there much, or any, talk at Bridgeport about Drawbaugh's talking-machine, or not?

[*Objected to as a leading and improper mode of inquiry.*]

A. I heard it frequently spoken of in my bar-room.

Q. 22. Did John C. Comfort ever, within the last year or two, say anything to you about Drawbaugh's talking-machine?

[*Objected to as irrelevant and immaterial.*]

A. I can't remember whether it was talking-machine or telephone about which him and I had a conversation.

Q. 23. Did you tell him that you had heard of Drawbaugh's telephone or talking-machine while you lived at Camp Hill?

[*Objected to as irrelevant, immaterial, and incompetent.*]

A. Yes, sir.

Q. 24. What remark, if any, did he make when you told him that?

[*Objection renewed.*]

A. I don't remember what remark he made.

Q. 25. Do you remember the general substance or import of it?

[*Objection renewed, and this question especially objected to in view of the witness' last statement that he doesn't remember what the remark was.*]

A. I don't remember what he said.

Q. 26. Do you remember my being at your hotel early last summer, and your telling me there about the conversation you had with Mr. Comfort?

A. Yes, sir.

Q. 27. Perhaps, then, I can refresh your memory; at that time you stated to me that when you told Mr. Comfort that you had heard about Drawbaugh's talking-machine while you lived at Camp Hill, Mr. Comfort replied "Oh, hell, that isn't the kind of evidence we want;" do you now remember whether that was or was not the remark?

[*Objected to as immaterial, irrelevant, leading, and embodying statements of counsel, not evidence.*]

A. It was the remark, but it didn't come in that stage. The question was, what he said after I told him I had heard of the talking-machine at Camp Hill, if I understood it right.

Q. 28. At what stage did that remark of Mr. Comfort's come in?

[*Objections continued.*]

A. If it did come in, I said; I don't remember of it coming in that way. When I told him that Abraham May ought to know something about Drawbaugh's talking-machine—or telephone, I don't know which—then he made this remark about that wasn't the kind of evidence he wanted; I can't say whether he said "To hell with such evidence" or not; he may have said it, and I forgotten it.

[*Deposition objected to on grounds already stated, also as not rebuttal.*]

Cross-examination, de bene esse, by Mr. Howson:

Cross-Q. 29. When were you last at Eberly's Mills or Milltown, as nearly as you can recollect?

A. I haven't been through the town for six years.

Cross-Q. 30. While you were living at Camp Hill, did you have occasion to visit Eberly's Mills or Milltown every now and then?

A. Not very often.

Cross-Q. 31. Your hotel which you are now keeping is how far from Eberly's Mills?

A. About two miles, as near as I can tell; may be a little over.

Examination taken, reduced to writing, and by the witness affirmed and subscribed to before me, this 18th day of March, 1884.

FRED. M. OTT,
Examiner.

J. A. SMITH.

THOMAS H. RAMSEY, *being produced, sworn, and examined, saith:*

Examined by Mr. Jacobs:

My age is fifty-eight; I reside at Carlisle, Cumberland county, Pennsylvania; I am not doing anything just now, and I haven't been for some time.

Q. 1. Were you, or not, formerly a justice of the peace in and for the borough of Carlisle?

A. Yes, sir.

Q. 2. From what time to what time?

A. From the 13th of March, 1875, to the 13th of March, 1880.

Q. 3. If you have with you your docket on which were entered civil suits brought before you during that period, will you please produce it and point out to the examiner the entry of any suit appearing upon it in which Cyrus Bowman and J. B. Drawbaugh were parties?

A. Yes, sir.

[*Witness produces docket and points out the following entry, a copy of which is offered in evidence by respondents' counsel.*

Objected to by Mr. Howson as immaterial and irrelevant. The entry is as follows:

"Cyrus Bowman	July 11, 1878, Action founded on a due bill
vs	dated October 2, 1875, which the defendant by
J. B. Drawbaugh	letter dated July 8, 1878, request to have judg-
Entering action 25	ment entered or by docket by confession waving
Judgment 20	the right of serving summons,
Execution & return 40	Amount of due bill $\$14\frac{65}{100}$
receiving money 20	Interest $\$2\frac{25}{100}$
satisfaction 10	
1.15	
April 6, 1883 Transcript 40.	

Judgment by confession for the sum of sixteen dollars and ninety cents and costs.

September 14, 1878 Execution issued to Josua Fagan constable, returnable on the 4th day of October 1878. September 14 1878 Execution returned by constable and money paid into office

Received satisfaction

Cyrus Bowman"]

[*Deposition objected to as incompetent, irrelevent, immaterial, and not in rebuttal, and as in itself proving nothing.*]

Cross-examination waived by Mr. Storrow.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 18th day of March, 1884.

FRED. M. OTT.
Examiner.

THOMAS H. RAMSEY.

Adjourned until March 19, at 10, A. M.

March 19, 1884, 12, M.

Examination resumed.

Present, Mr. Howson for complainants, and Mr. Hill for respondents.

W. JAMES DALE, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

My age is thirty-three; I reside at Carlisle, Cumberland county, Pennsylvania; I am a merchant.

Q. 1. Are you a graduate of Dickinson College?

A. Yes, sir; I took the scientific course at Dickinson College, Carlisle, Pennsylvania.

Q. 2. I suppose you have heard of Daniel Drawbaugh's talking-machine?

[*Objected to as leading.*]

A. Yes, sir.

Q. 3. In what town did you first hear of it?

[*Objected to as not in rebuttal, this objection to apply to all inquiries on this line.*]

A. In Carlisle.

Q. 4. State, as near as you can, when you first heard of it.

A. I think it was between the latter part of 1873 and the early part of 1874.

Q. 5. Was it as late as the beginning of 1875?

[*Objected to as incompetent.*]

A. I am almost positive it was not.

Q. 6. Who mentioned the subject of Mr. Drawbaugh's talking-machine to you at that time and place?

[*Objected to for the same reasons, and as inquiring for hearsay.*]

A. Mr. George Emig.

Q. 7. What was Mr. Emig's business, and where is he now, if you know?

A. He was an attorney-at-law, and is now in some portion of the western country.

Q. 8. He was the same Mr. Emig who was afterwards district attorney of Cumberland county, Pa.?

A. Yes, sir.

[*Deposition objected to as not rebuttal, and as immaterial, as hearsay, and as not evidence.*]

Cross-examined by Mr. Howson, de bene esse:

Cross-Q. 9. How lately has Mr. Emig resided in Carlisle, to the best of your recollection?

A. I don't remember exactly, but it is within three years past.

Examination taken, reduced to writing, and by the witness affirmed and subscribed to before me, this 19th day of March, 1884.

FRED. M. OTT,
Examiner.

W. JAMES DALE.

STEPHEN H. MORLEY, *being produced, affirmed, and examined, saith:*

Examined by Mr. Hill:

My age is forty-five; I reside at Marysville, Perry county, Pa.; I am handling engines for the Northern Central Railway Company at Marysville.

Q. 1. Are you the Stephen H. Morley who formerly kept store at Marysville, and a brother of T. W. Morley?

A. Yes, sir.

Q. 2. At what time, as near as you recollect, was the sheriff's sale of your store goods, at which your brother bought the stock of goods?

A. Some time in March, 1878; I don't remember what date.

Q. 3. The store building in which you carried on merchandising contained a tenement or dwelling, I believe, did it not?

A. Yes, sir; the second floor was used as a dwelling.

Q. 4. Who lived in that dwelling at the time of the auction sale of your store goods?

A. I did.

Q. 5. How long did you continue to live in that dwelling after the sale of your store goods?

A. It couldn't have been many days after the first of April, 1878, that I moved out.

Q. 6. Who moved in then?

A. My brother.

Q. 7. Has he occupied that dwelling ever since?

A. Yes, sir.

Q. 8. How long did you live in that dwelling before you moved out in April, 1878?

A. I moved in there in the spring of 1861 and lived until 1878.

Q. 9. Did you know George W. Kissinger, who used to live on the Thomas Draper farm just back of the village of Marysville?

A. Yes, sir. I made a mistake in my last answer, it should have been from 1871 to 1878, instead of from 1861.

Q. 10. Did you ever know anything about his having a hydraulic ram on the Draper farm to force water from the spring up to the house?

A. Yes, sir.

Q. 11. Did you ever see that ram there on the farm?

A. Yes, sir.

Q. 12. In what year did you first see it there?

A. I can't remember whether it was 1876 or 1877.

Q. 13. Do you wish to be understood that it was in one of those two years?

[*Objected to as leading.*]

A. Yes, sir.

Q. 14. Was the ram in operation when you saw it there?

A. Yes, sir.

Q. 15. Did you ever see the ram there afterwards while Mr. Kissinger occupied the farm?

A. No, sir.

Q. 16. About what time of the year was it that you saw the ram there in 1876 or 1877?

A. I think it was about October some time.

Q. 17. Do you remember whether it was a Sunday or week-day that you were up there and saw the ram that time?

A. It was a Sunday.

Q. 18. Did anybody go up there with you that day; if so, who?

A. Yes, sir; Theo. Fenn, I think—the young man.

Q. 19. What did you go up there for that day?

A. To see the ram.

Q. 20. You had heard of the ram before, then, had you?

[*Objected to as leading.*]

A. Yes, sir.

Q. 21. Where did you and Theo. Fenn start from that day, when you started to go up?

A. We started from my dwelling-house.

Q. 22. Where were you living at that time?

A. I was living in the dwelling-house over the store.

Q. 23. How long before that had you heard anything about Mr Kissinger's having a ram, or going to have a ram, on the Draper farm?.

[*Objected to as calling for loose and vague hearsay, not evidence.*]

A. I can't say; it might have been a year or eighteen months or longer.

Cross-examined by Mr. Howson:

Cross-Q. 24. You say you are handling engines for the Northern Central Railway Company: just what do you mean by that, and how long have you been employed at it?

A. We take charge of the engine after it arrives, and take it back to the pit, as we call it, and draw the fires, if they need it; if not, we clean them; I will have been employed at it three years in May.

Cross-Q. 25. What were you doing, and where, between March, 1878, and May, 1881?

A. My brother employed me as clerk in the store I formerly kept;

I can't remember just the dates I was employed by him—T. W. Morley—from 1878 to the spring of 1881.

Cross-Q. 26. Where did you live while you were employed as clerk by your brother?

A. In the village of Marysville. Part of the time it was a quarter of a mile from the store, and the balance of the time about a hundred yards, I should judge.

Cross-Q. 27. Your memory for dates and times seems to be a little uncertain; when asked in direct examination how long you lived in the dwelling above the store which you used to keep, you first said from the spring of 1871, then from the spring of 1861, and then again from the spring of 1871; which of these dates was the true one, as you now remember?

[*The opening statement of the question objected to as uncalled for and improper.*]

A. 1871.

Cross-Q. 28. When you went up to the Draper farm to see the ram with Mr. Fenn, as you think, did he invite you, or you him, to go?

A. I don't know whether he invited me or I invited him; I don't know that it was Mr. Fenn; I am not positive that it was Mr. Fenn; it was some one.

Cross-Q. 29. Whom did you meet on the Draper farm that day, and how long were you there?

A. I don't remember meeting any one but Mr. Kissinger; I don't remember how long we were there—probably half an hour.

Cross-Q. 30. Were you in Mr. Kissinger's house that day?

A. No, sir.

Cross-Q. 31. Were you the whole half hour looking at the ram?

A. No, sir; I presume we were talking about it and looking around at something else; I don't remember what.

Cross-Q. 32. I don't ask for presumptions, but for your memory, if you have any, upon the subject; and will ask you what talk there was about the ram on that occasion, by whom, and what other things you went to see, and who went with you?

A. The only talk I remember was how he was going to secure it from freezing; I believe he said he was going to put a roof over the ram and secure it in that way. Mr. Kissinger said that; I don't remember what other things we looked at or what other talk we had.

Cross-Q. 33. Where did you go to after leaving the Draper farm that day?

A. I don't know; I presume we went home.

Examination taken, reduced to writing, and by the witness affirmed and subscribed to before me, this 19th day of March, 1884.

FRED. M. OTT,
Examiner.

STEPHEN H. MORLEY.

HENRY KILMORE, *being produced, affirmed, and examined, saith:*

Examined by Mr. Hill:

My age is fifty; I reside in Fairview township, York county, Pennsylvania; at the locality called Nauvoo; I am a carriage-builder.

Q. 1. How long have you lived at Nauvoo?

A. It will be twenty years this April.

Q. 2. Do you know Daniel Drawbaugh of Eberly's Mills, Cumberland county, Pennsylvania?

A. Yes, sir.

Q. 3. How long have you known him?

A. I have known him for the last thirty years.

Q. 4. Did you ever see any of his talking-machine instruments?

[*Objected to as not rebuttal, and as leading.*]

A. Yes, sir.

Q. 5. When did you first see any of them?

A. It was about in 1867.

Q. 6. Where did you see them at that time?

A. In his shop.

Q. 7. In what building was his shop at the time you first saw the talking-machine instruments there?

A. Right back of the grist-mill.

Q. 8. Who, if anybody, was there with you at that time?

A. Michael S. Drorbaugh.

Q. 9. Did you see any talking-machine instruments at Mr. Drawbaugh's place after that visit?

[*Objected to as leading.*]

A. No; not after that.

Q. 10. Were you at Mr. Drawbaugh's shop after that first visit?

A. Yes, sir; I have been.

Q. 11. How soon after that first visit were you there again?

A. I didn't get there until in June, 1868.

Q. 12. Where was his shop at the time you were there in June, 1868?

A. It was down near the creek.

Q. 13. In the old clover mill?

[*Objected to as leading.*]

A. Yes, sir.

Q. 14. You didn't see any instruments there at the time you were there at the old clover mill, then, if I understand you aright?

[*Objected to as already fully answered.*]

A. No, sir.

Q. 15. At the time you were there at the old clover mill, did you have any talk with Daniel Drawbaugh about the talking-machine?

[*Objected to as leading.*]

A. I didn't have particularly myself; the gentleman who was along with me asked him whether he thought it ever would amount to anything and Mr. Drawbaugh said that he was fully convinced that there was no trouble about it giving satisfaction.

[*Answer objected to by Mr. Storrow as not evidence.*]

Q. 16. Who was the gentleman who was along with you?

A. Stephen Birdsall.

Q. 17. Did Mr. Drawbaugh say whether he was working at the machine at that time, or not?

[*Objected to as leading.*]

A. Yes, sir.

Q. 18. Do you remember what he said he was doing at it?

[*Objected to, the alleged declarations of Mr. Drawbaugh not being evidence.*]

A. No, I don't.

Q. 19. Did he say what use he was going to put it to when he got it completed?

[*Objected to as leading.*]

A. Talking from one point to another.

Q. 20. Michael S. Drorbaugh is dead, is he not?

A. Yes, sir.

Q. 21. Do you know when he died?

A. He died March 16, 1871.

Q. 22. Did you have anything to do about burying him?

A. Yes, sir; I made his coffin.

Q. 23. Did you ever hear anything said around about Nauvoo about Daniel Drawbaugh's talking-machine?

[*Objected to as not rebuttal, and as incompetent.*]

A. Yes, sir.

Q. 24. Before the year 1876 or after?

[*Objection continued, and objected to as asking for guess-work.*]

A. Before.

[*Deposition objected to as not rebuttal, and on the grounds already given.*]

Cross-examined, de bene esse, by Mr. Howson:

Cross-Q. 25. When next after June, 1868, were you in Daniel Drawbaugh's shop?

A. I wasn't in after that.

Cross-Q. 26. Have you seen Mr. Drawbaugh since that time, to talk with him?

A. I have seen him to talk with him; yes, sir.

Cross-Q. 27. A number of times?

A. No, sir.

Cross-Q. 28. More than once.

A. I think I have seen him twice.

Cross-Q. 29. How long ago, and where?

A. I seen him once, two years ago this spring, at a sale near Lewisbury; the other time was just before haymaking, this last year, at my place where I live.

Cross-Q. 30. When you saw him about two years ago, did he say anything about the talking-machine, or about this suit?

A. No; he didn't then.

Cross-Q. 31. Did he, when he saw you last year just before haymaking?

A. Yes, sir.

Cross-Q. 32. Did he come expressly to see you, or did you happen to meet him?

A. He came there to my place; I don't know whether he came expressly to see me or not.

Cross-Q. 33. How long was he with you on that occasion?

A. It wasn't over about fifteen minutes.

Cross-Q. 34. When you saw the talking-machine, as you think, at Mr. Drawbaugh's shop, what other things did you see and take notice of at the same time?

A. I saw a tack-machine that he was working at and was just about completing at that time; there was a good many things there that I can't recollect.

Cross-Q. 35. Give us those that you can recollect.

A. He showed me a faucet that he had there, and he showed me some drawings that he had there.

Cross-Q. 36. Drawings of what?

A. One was a drawing of his tack-machine.

Cross-Q. 37. How long have you known of the existence of this suit, and how did you hear of it?

A. It is in the neighborhood of four years, as near as I can tell. I think Drawbaugh told me himself, the first I knew of it.

Cross-Q. 38. Where was that that he told you of this suit?

A. It was at Bridgeport, I think.

Cross-Q. 39. Where in Bridgeport did you meet Mr. Drawbaugh on that occasion?

A. At the station.

Cross-Q. 40. When last before that had you met him, and where?

A. I hadn't met him, that I know of, any place else—that I recollect of; that I can't tell you.

Cross-Q. 41. From whom, if any one besides Mr. Daniel Drawbaugh, have you heard anything about this suit, or the talking-machine, within the last two years; whom have you heard talk about it?

[*Objected to as irrelevant and immaterial.*]

A. I heard Jacob S. Kunkle and Andrew C. Hake.

Re-direct by Mr. Hill:

Q. Q. 42. If I understand your testimony correctly, you have no recollection of meeting Mr. Drawbaugh between the time when you were at his shop in June, 1868, and the time when you met him at the railway station at Bridgeport; is that your meaning, or not?

[*Objected to as leading.*]

A. To the best of my recollection it is.

Examination taken, reduced to writing, and by the witness affirmed and subscribed to before me, this 19th day of March, 1884.

FRED. M. OTT,
Examiner.

HENRY KILMORE.

Adjourned till March 20, 1884, at 10, A. M.

March 20, 1884, 10, A. M.

Examination resumed.

Present, Mr. Howson and Mr. Storrow for complainants, and Mr. Hill for respondents.

WILLIAM R. GORGAS, *being produced, affirmed, and examined, saith:*

Examined by Mr. Hill:

My age is seventy-seven; I reside in Harrisburg, Dauphin county, Pa.; I was originally a farmer but have retired from business.

Q. 1. You formerly lived in Cumberland county, Pa., near Milltown, did you not?

A. Yes, sir; I lived there seventy-one years and six months; I was born there; I moved over here on the 8th of November, 1877.

Q. 2. When you lived over in Cumberland county, did you know Daniel Drawbaugh?

A. Yes, sir; I knew him from childhood. I don't know whether he was born before his father moved there or not—from boyhood, anyhow.

Q. 3. Did he ever come to you to get you to take an interest in any inventions, and furnish money to procure patents on them?

[*Objected to as not rebuttal.*]

A. He never came to me; I would have to say no, he never came to me. I would like to make an explanation: I was in the shop at the time—the nearest I can come to it is from the year 1873 to November, 1877, because after I left there I wasn't in the shop—and Drawbaugh said that he had a good thing, and that if I would take out the patent he would give me a half interest in it. I don't recollect what it was; I was losing in the neighborhood of $4,000, and had a surfeit of it; and I didn't pay any attention to it; that is, to my best recollection.

Q. 4. Do you mean that you were losing in the neighborhood of $4,000 in the old faucet and pump business?

A. Yes, sir; in the faucet and pump business.

Q. And had a surfeit of patent business?

[*Objected to as leading.*]

A. Yes, sir.

[*Deposition objected to as not in rebuttal, and cross-examination waived by Mr. Storrow.*]

Examination reduced to writing, and by the witness affirmed and subscribed to before me, this 20th day of March, 1884.

FRED. M. OTT,
Examiner.

WM. R. GORGAS.

W. SCOTT BRUCKART, *being produced, sworn, and examined, saith:*

Examined by Mr. Jacobs:

Thirty-six years of age; residence, Shiremanstown, Cumberland county, Pennsylvania; occupation, physician.

Q. 1. How long have you been practicing medicine in Shiremanstown?

A. Since February 3, 1874.

Q. 2. About the time you began to practice medicine, did you or not purchase any real estate in Shiremanstown; and if so, what, and from whom?

A. I articled for the property in January, 1874, shortly after the middle of January—22nd—and I took possession April 1st, 1874; I purchased from Martin B. Mosser, M. D., two lots, one containing house and barn.

Q. 3. If you have a deed of that property, please produce it, so that the examiner may make a note of it upon the record.

[*Witness produces deed made by M. B. Mosser and Rebecca R. Mosser, his wife, to Dr. W. Scott Bruckart, March* 30, 1874, *acknowledged before Daniel Shelly, justice of the peace, March* 30, 1874, *and recorded in the office for recording deeds in and for Cumberland county, Pennsylvania, March* 27, 1876, *in deed book* "*L*," *vol.* 3, *at page* 30.]

Q. 4. Who, if any one, lived in that house before you took possession on April 1st, 1874?

A. Dr. M. B. Mosser and family.

Q. 5. When did he and his family move out of it?

A. They loaded their furniture on the last day of March, 1874, and vacated the house and gave me possession on the morning of the 1st of April, 1874.

Q. 6. Where did they move to?

A. To Mechanicsburg, Cumberland county.

Q. 7. Did Dr. M. B. Mosser ever afterwards live in Shiremanstown?

A. He did not.

[*Deposition objected to as not rebuttal, and cross-examination waived by Mr. Howson.*]

Examination taken, reduced to writing, and by the witness affirmed and subscribed to before me, this 20th day of March, 1884.

FRED. M. OTT,
Examiner.

W. SCOTT BRUCKART.

Recess until 2, P. M.

WILLIAM B. HART, *being produced, sworn, and examined saith:*

Examined by Mr. Jacobs:

My age is forty-two; residence, Harrisburg, Penna.; I am a banker, now.

Q. 1. In 1878, a commission was appointed under an act of assembly passed by the Legislature of Pennsylvania, for the purpose of locating a site for and superintending the erection of a penitentiary for the middle district of that State; will you state whether or not you have had any official connection with that commission, and if so, what?

A. I was elected secretary at the organization of that commission, and have continued as such up to the present time.

Q. 2. It has appeared in evidence in this case that said commission made a visit to Marysville, Perry county, for the purpose of examining a proposed site there; do you remember that fact?

A. I do; I was with the commission on that trip for selecting a site.

Q. 3. If you have here present the minute-book of that commission, will you please produce it, and point out to the examiner any entry upon it which may fix the day upon which that visit was made?

A. I have, and I will point out the entry.

[*Witness produces book, and points out the following entry:*

"14 Friday Sept. 27, 1878,
Commission visited McVeytown, Lewistown, Marysville and Harrisburg."]

[*Cross-examination waived by Mr. Howson.*]

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 20th day of March, 1884.

FRED. M. OTT,
Examiner.

W. B. HART.

Adjourned until March 21, 1884, at 2, P. M.

March 21, 1884, 2, P. M.

Examination resumed.

Present, Mr. Jacobs for respondents, and Mr. Howson for complainants.

JOHN S. DOUGHERTY, *being produced, sworn, and examined saith:*

Examined by Mr. Jacobs:

My age is forty-six; I reside at Newville, Cumberland county, Penna.; I am a merchant at Newville, having a store there, and I am traveling on the road also for Hoar, Morgan & Co., 613 Market street, Philadelphia, Penna.

Q. 1. Were you ever at the shop of Daniel Drawbaugh at Eberly's Mills, Cumberland county, Penna.?

A. Yes, sir; in May, 1868, but could not obtain admittance, Mr. Drawbaugh being absent.

Q. 2. What did you go there for?

A. To see what was regularly denominated an invention of Mr. Daniel Drawbaugh's—denominated the talking-machine.

[*Answer objected to by Mr. Howson as not rebuttal, the objection to apply to all succeeding questions and answers on the same line.*]

Q. 3. Where, and from whom, had you heard about that talking-machine before going to the shop to see it?

A. In the early spring of 1867 I heard Harry Drawbaugh, Mr Daniel Drawbaugh's brother, speak of it at Newville; Mr. Lewis, Mr. C. Eberly, at New Cumberland, and from others in common at Shiremanstown, and Mechanicsburg. What I mean by "in common" is that it was common talk.

Q. 4. Whereabouts in Newville did you hear Harry Drawbaugh speak of it in the early spring of 1867?

A. Right in front of my place of business—in my store and in front of my place of business. To my recollection it was in February, 1867. It may have been in February or it may have been in March—anywhere between January and March; it was after the first of the year and before the first of April; my recollection is that it was February, from some other surroundings that I recollect more particularly.

Q. 5. How did Harry Drawbaugh come to be at your place of business at that time?

A. He came to ask me to go on his bond as an internal revenue officer in connection with the whisky business.

Q. 6 What, if any, official position do you at present occupy at Newville?

A. None, sir; but have been elected chief burgess for the ensuing year.

[*Deposition objected to as not rebuttal and as hearsay, and cross-examination, de bene esse, by Mr. Howson*:]

Cross-Q. 7. You and Harry Drawbaugh have been quite intimately acquainted for a great many years past.

A. No, sir; we have been acquainted for a number of years but not intimately.

Cross-Q. 8. How long have you and he been acquainted.

A. For about twenty years.

Cross-Q. 9. And if I understand your testimony, that acquaintance was sufficiently intimate as early as 1867 to lead him to ask you to go upon his bond when he assumed a public office.

A. It was not, sir.

Cross-Q. 10. Have you and he had any dealings with each other—business or social—since that time?

A. Since April 14, 1883, we have.

Cross-Q. 11. Of what nature, since the time you have mentioned?

A. Because I have a store at Newville, and he patronizes the store and pays for what he gets.

Cross-Q. 12. What kind of a store is that which you keep at Newville, and how long have you been keeping it?

A. The store I keep is, shoes, hats, trunks, notions, and gents' furnishing goods—since the 14th of April, 1883.

Cross-Q. 13. What kind of a business were you carrying on in Newville before that time, and for how long a time?

A. In 1861 and 1862 there was the firm of J. S. Dougherty & Co, composed of J. S. Dougherty and Edwin James; the firm commenced in April, 1861, and expired in April, 1863, as near as I can recollect; I am not exactly sure about the month, but it was somewhere in that neighborhood—afterwards occupied the position of Brewster & Dougherty to February or March, 1867, at which time James McCandish, receiver, was appointed for Brewster and Dougherty; the business was merchant tailoring and gents' furnishing goods. Between March, 1867, and April, 1883, I was not carrying on any business at Newville.

Cross-Q. 14. During all these years, as I understand, your residence continued to be at Newville?

A. Yes, sir.

Cross-Q. 15. And I understand that for twenty years past, or more, you have been acting in the capacity of traveling salesman; is that the fact?

A. Since February, 1868, I have been connected in the wholesale business with Conover, Dorff & Co., 524 Market street, Phila.; David J. Hoar, 613 Market street, now Hoar, Morgan & Co., up to this time, as a salesman in boots and shoes.

Cross-Q. 16. When were you last at Eberly's Mills or Milltown?

A. To my recollection, not since 1870 or 1871.

Cross-Q. 17. Were you there more than once between 1868 and 1870 or 1871?

A. Yes, sir; perhaps five or six times.

Cross-Q. 18. Have you any personal acquaintance with Mr. Daniel Drawbaugh, and if yes, how long have you known him?

A. Not personally; I have known of him for perhaps twenty years.

Cross-Q. 19. In what section of the country has your business of traveling salesman been carried on down to the present time?

A. York, Adams, Cumberland, Franklin, Perry, Juniata, Bedford,

Fulton, Mifflin, Centre, Huntingdon, Dauphin counties, Pennsylvania; Washington, Frederick, and Carroll counties, Maryland.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 21st day of March, 1884.

FRED. M. OTT,
Examiner.

JOHN S. DOUGHERTY.

SAMUEL G. GEIB, *being produced, sworn, and examined, saith:*

Examined by Mr. Jacobs:

I am the agent for the Pennsylvania and Northern Central railroad companies at Marysville, Perry county, Pennsylvania.

Q. 1. You have been asked to produce here to-day certain books of said companies showing the dates of the shipment of goods to and from Marysville, to and by certain parties; if you have any book with you showing a shipment of goods to James Champion at Marysville, will you please produce it, and point out the entry to the examiner in order that it may be copied upon the record?

A. Yes, sir; here it is. [*Witness produces book entitled "Record of N. C. R. W. Freight Received" and continues.*] I find here the entry of freight received March 28, 1876, to James Champion, from Dauphin, manifest No. 315, household goods.

Q. 2. Please state to the examiner the substance of entries which I shall point out to you.

A. We received June 23, 1876, at our station, lot of household goods consigned to Daniel McFarland from Dauphin. In another book, which contains an account of freight shipped from Marysville by Pennsylvania railroad, I find that there was forwarded February 28, 1877, a lot of household goods consigned to J. M. Bruner, Duncannon. In the same book I find a shipment on February 27, 1878, of a lot of household goods consigned to James Harper, Duncannon. In the book containing a record of freight forwarded on N. C. R. W., I find that on April 12, 1877, a lot of household goods were consigned to Daniel McFarland, New Cumberland. In another book, containing a record of freight forwarded by the Pennsylvania railroad, I find that on September 19, 1874, one box of merchandise was consigned to Joseph Ditlow, billed to Pittsburgh transfer and marked to Wheeler, Porter county Indiana. In another book, containing a record of freight forwarded by

the same road, I find that on March 20, 1877, two boxes of household goods were consigned to Joseph Ditlow, billed to Pittsburgh transfer and marked for Wheeler, Porter county, Indiana.

Cross-examination waived by Mr. Howson.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 21st day of March, 1884.

FRED. M. OTT,
Examiner.

SAMUEL G. GEIB.

Adjourned until March 22, 1884, at 10, A. M.

March 22, 1884, 10.30, A. M.

Examination resumed.

Present, Mr. Storrow and Mr. Howson for complainants, and Mr. Jacobs for respondents.

HENRY N. BOWMAN, *being produced, sworn, and examined, saith:*

Examined by Mr. Jacobs:

My age is forty-three; I reside at Camp Hill, Cumberland county Penna.; I am a justice of the peace.

Q. 1. Will you look at the paper which I now hand you, marked "Exhibit Mosser affidavit—Feb. 9, 1883, Fred. M. Ott, Examiner," and state whether you have ever seen it before?

A. Yes, sir; I have.

Q. 2. When and where did you ever see it before?

A. At Mechanicsburg, on the 4th day of December, 1880, in Dr. Mosser's office, in his house.

Q. 3. Is that your signature appended to the jurat?

A. Yes, sir.

Q. 4. It was subscribed to by Dr. Mosser in your presence?

A. Yes, sir; and I administered the affirmation to Dr. Mosser.

Q. 5. Was the paper read over to Dr. Mosser previous to his signing it, and being qualified to it, or not?

A. Yes, sir; it was read to him.

[*Complainants' counsel here renew their objections heretofore made to the paper referred to in the foregoing deposition. See p.* 1146 *compts.' printed record; and cross-examination, de bene esse, by Mr. Howson.*]

Cross-Q. 6. How long have you been living at Camp Hill, and how long have you been acting as a justice of the peace?

A. I have lived at Camp Hill all my life with the exception of about three years—1861, and 1862, and 1874, when I lived at Harrisburg; I have been a justice of the peace since May, 1880.

Cross-Q. 7. About the time that this paper, purporting to be an affidavit by Dr. Mosser, was taken, you visited a number of persons in Cumberland county, in company with Mr. Jacobs, one of defendants' counsel, and took a number of affidavits, is not that the case?

A. Yes, sir; I did.

Cross-Q. 8. Have you now, or have you had, any stock of the People's Telephone and Telegraph Company, or of the Drawbaugh Telephone Company; and if yes, when did you acquire such stock?

[*Objected to as irrelevant and immaterial.*]

A. I have no stock now, neither had I any stock for myself at any time.

Cross-Q. 9. For whom did you have such stock?

[*Same objections.*]

A. A gentleman here in Harrisburg just asked me to buy some, and gave me the money and I just carried it to him; that was all the transaction there was in the matter.

Cross-Q. 10. When and from whom did you procure that stock?

A. I can't remember exactly the time; it must be a couple of years ago; I can't fix the date; it is impossible now; it was for Mr. Henry Cohen; I got it from Mr. Chellis.

Cross-Q. 11. This paper which you have been asked to identify—can you tell us by whom it was written, and where it was written?

A. By Mr. Jacobs in Mr. Mosser's office at Mechanicsburg.

Cross-Q. 12. By whom was it read over to Dr. Mosser?

A. I think I read it to him myself; and Dr. Mosser also read it.

Cross-Q. 13. Was not Dr. Mosser in ill health at that time?

A. I know he wasn't well, but he was still attending to office practice and was called in to consult with.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 22d day of March, 1884.

FRED. M. OTT,
Examiner.

H. N. BOWMAN.

THOMAS R. BURGNER, *being produced, affirmed, and examined, saith:*

Examined by Mr. Jacobs:

My age is forty-five; I reside at Plainfield, Cumberland county, Penna.; I am a miller.

Q. 1. Have you held any public office in Cumberland county?

A. I was elected twice as county auditor in Cumberland county, and served six years; and I was appointed once as justice of the peace by the Governor, to fill the unexpired term of Philo H. Shomberger, until the next general election; I have also been a school-director for three years.

Q. 2. How long have you lived at or near Plainfield?

A. Ten years this coming April.

Q. 3. Where did you live next before you moved there?

A. I lived at Thos. B. Bryson's flouring-mill at the Silver Spring, north of Mechanicsburg, on the Lamb's Gap road, going towards the mountain.

Q. 4. If you have any book-entry showing when you moved to Thos. Bryson's mill, will you please produce the book, and point out the entry to the examiner, in order that he may note it upon the record?

[*Witness produces book.*]

A. There is the entry of my commencement of service with Mr. Bryson.

[The entry is as follows:]

"1869 Thos. B. Bryson, Dr., $ cts
April 1st to Commencement of milling and
Boarding of Benj. H. Kauffman
at $550 00 per annum with house rent free"]

[Witness continues]—I have another book showing when I severed my connection with him.

Q. 5. Where did you live next before you moved to Bryson's mill?

A. In the village of Shiremanstown, in Cumberland county.

Q. 6. How long did you live there?

A. I lived there for some time; I can't give you dates; but I enlisted and went to Camp Curtin on the 17th of October, 1862, and my family removed to Shiremanstown shortly afterwards—somewhere about the 1st of November, 1862; that is, it was shortly after my leaving home. I returned to Shiremanstown, after being mustered out, about the 21st of October, 1865, and continued to reside at Shiremanstown up to the time I went to Bryson's mill.

Q. 7. Are you acquainted with Daniel Drawbaugh, of Eberly's Mills; if so, how long have you known him?

A. Yes, sir; I first met him about the latter part of 1857; about five days after the great panic of 1857.

Q. 8. Did you, or not, ever hear that he had a talking-machine?

[*Objected to as not rebuttal, as leading, and as asking for hearsay, this objection to apply to all succeeding questions upon this line.*]

A. Yes; I heard that.

Q. 9. Where were you living when you heard it?

A. In Shiremanstown.

Q. 10. Did you hear it once, or more than once?

A. My recollection is, that during the latter part of my living there, I heard it more than once.

Q. 11. Can you give us any idea as to how general the talk upon the subject was at that time?

[*Objected to as inquiring for mere guess-work or inference*]

A. I can't tell you whether it was talked about everywhere, but my recollection is that the novelty of the thing was talked over a good deal at that time, but to be more specific, I could not—with the exception that Mr. Drawbaugh invited me to see it at one time; that is positive remembrance, but I never saw it, at no time.

Q. 12. I understand you to mean that whilst you lived at Shiremanstown you heard others besides Mr. Drawbaugh speak of it; is that correct?

[*Objected to as assuming and abominably leading.*]

A. I couldn't specify others—that is, in any particular case.

[*Deposition objected to on grounds already stated.*]

Cross-examined, de bene esse, by Mr. Howson:

Cross-Q. 13. Have you ever been at the village of Milltown or Eberly's Mills, and if yes, how lately?

A. Some time during March, 1869, was the last time—to this time—that I have been there; I have never been there since. I was on a visit then on some business; I was connected as a member in Teahl's mill-bush company; I had been to see Mr. Teahl immediately east of Milltown at the factory, and on returning home stopped to see some machinery which was in the process of making for the bush company.

Cross-Q. 14. Where, and by whom, was that machinery being made?

A. By a company that was organized under the supervision of Mr. Drawbaugh, for making faucets and pumps, at Milltown.

Cross-Q. 15. What business were you carrying on while you lived at Shiremanstown?

A. From about the 25th of October, 1865, I was engaged about a year and a-half in selling dry goods and notions and groceries at a salary; subsequently, I was engaged two years in selling nursery stock; I was also connected with the mill-bush company; I have some items of interest to myself in my book that connect me with it from the 17th of June, 1868, to the 2d, 3d, and 4th of February, 1869.

Cross-Q. 16. During the time that you were connected with the mill-bush company, were you at Mr. Drawbaugh's shop more than once?

[*Objected to as immaterial, irrelevant, and introducing new matter.*]

A. I have a distinct recollection of being there twice.

Cross-Q. 17. Since you have been living and doing business at Plainfield, Cumberland county, your business has brought you, every now and then, I suppose, to Harrisburg, and to those portions of Cumberland county in the vicinity of Harrisburg?

A. In 1877, my business brought me frequently to Harrisburg, but not having any business in the lower end of Cumberland county, I did not stop.

Cross-Q. 18. When did you learn of the existence of this suit?

[*Objected to as immaterial and irrelevant.*]

A. I don't know exactly, but it was first through the public prints, being a large subscriber and reader of newspapers; I had no knowledge of it before that.

Re-direct by Mr. Jacobs:

Q. Q. 19. How far is Plainfield from Harrisburg?

A. Twenty-three miles.

Q. Q. 20. When your business brought you to Harrisburg, as you have testified, how did you travel?

A. When I came on a matter of business, I came by rail.

Examination taken, reduced to writing, and by the witness affirmed and subscribed to before me, this 22nd day of March, 1884.

FRED. M. OTT,
Examiner.

THOS. R. BURGNER.

And now, March 24, 1884, Mr. Storrow being present for complainants, and Mr. Hill and Mr. Jacobs for respondents, it is stated by Mr Hill that respondents close their sur-rebutting testimony at this point, and it is agreed that complainants will begin their testimony in rejoinder not later than April 10th, and close it not later than May 15th, 1884.

STATE OF PENNSYLVANIA, }
County of Dauphin, } *ss:*

I hereby certify that the foregoing depositions of witnesses on behalf of respondents, in sur-rebuttal, were begun at Harrisburg, Dauphin county, Penna., on the 23d day of October, 1883, and closed on the 22nd day of March, 1884, having been adjourned from time to time as set forth in the foregoing record; and that the several witnesses were duly qualified by me, and subscribed their several depositions in my presence, as set forth.

Witness my hand this 24th day of March, 1884.

FRED. M. OTT,
Examiner.